

FEDERAL RESERVE BANK
OF RICHMOND

February 20, 1929

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Geo. B. Vest, Asst. Counsel.

Dear Mr. Vest:

I have your letter of February 18th acknowledging my letter enclosing to you a copy of the complaint in the action of Gilbert, Trustee, v. Phoenix Mills, et al.

I notice that you are sending a copy of the complaint to the Counsel for other Federal Reserve banks and it occurs to me that you might wish to send them a copy of my answer, as the answer sets forth the facts which are of interest to the Federal Reserve banks more fully than they are set forth in the complaint.

I am enclosing you a copy of the answer which I have prepared. The Receiver of the failed bank is filing a petition to remove this case to the Federal court, in which we and all other defendants will join. If the removal is effected, the answer will be filed in the Federal court and it may be necessary to make some slight changes in its form to comply with the Federal practice, because I think that in the Federal court the proceeding will be considered a suit inequity. The essential allegations, however, will not be changed, and therefore the answer enclosed will give all information which would be of any interest to the Counsel for other Federal Reserve banks.

Of course I shall keep your office advised as to the progress of this suit.

In sending copies of the answer to Counsel for other Federal Reserve banks I would be greatly obliged if you would say to them that I should of course welcome any suggestions which they may wish to make, particularly with reference to possible distinctions between this case and the case of Federal Reserve Bank v. Early.

Very truly yours,

(S) M. G. Wallace,
Counsel.

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 Commercial
National Bank of Statesville, N. C.,

Defendants.

ANSWER OF FEDERAL RESERVE BANK
OF RICHMOND, DEFENDANT.

Defendant, Federal Reserve Bank of Richmond, answering the complaint
of the plaintiff says:

I.

The defendant, Federal Reserve Bank of Richmond, has no knowledge
or information sufficient to form a belief concerning the allegations in
the first paragraph of the complaint and therefore denies the same.

II.

The defendant, Federal Reserve Bank of Richmond, has no knowledge
or information sufficient to form a belief concerning the allegations in
the second paragraph of the complaint and therefore denies the same.

III.

The defendant, Federal Reserve Bank of Richmond, admits that the
allegations in the third paragraph of the complaint are true.

IV.

The defendant, Federal Reserve Bank of Richmond, admits that the
allegations in the fourth paragraph of the complaint are true.

V.

The defendant, Federal Reserve Bank of Richmond, admits that it is a banking corporation organized and existing under the Acts of Congress, especially under that Act known as the Federal Reserve Act, having the power to engage in the business of banking as therein provided. Federal Reserve Bank of Richmond admits that before the times mentioned in the complaint it had established and was at all times thereafter and is now operating a branch in the county of Mecklenburg and the city of Charlotte in the state of North Carolina. The defendant, Federal Reserve Bank of Richmond, denies all allegations of the fifth paragraph of the complaint except in so far as they are herein admitted.

VI.

The defendant, Federal Reserve Bank of Richmond, admits the allegations of the sixth paragraph of the complaint.

VII.

The defendant, Federal Reserve Bank of Richmond, has no knowledge or information sufficient to form a belief as to the allegations in the seventh paragraph of the complaint and therefore denies the same.

VIII.

The defendant, Federal Reserve Bank of Richmond, admits that on April 16, 1928, it received from the Commercial National Bank of Raleigh, North Carolina, a check for the sum of six thousand nine hundred twenty-eight dollars and ninety-four cents (\$6,928.94) drawn on the Commercial National Bank of Statesville, but the Federal Reserve Bank of Richmond has no knowledge or information concerning the further description of the check received by it. The said check was sent by mail to the Charlotte Branch of the Federal Reserve Bank of Richmond in a letter dated April 14, 1928, for collection in accordance with the Regulations of the Federal Reserve Board and of the circulars and agreements hereafter mentioned. The Federal Reserve Bank of

Richmond has no knowledge or information sufficient to form a belief concerning the other matters and things alleged in the eighth paragraph of the complaint and therefore denies the allegations in the eighth paragraph of the complaint, except in so far as they are herein admitted.

IX.

The defendant, Federal Reserve Bank of Richmond, on April 16, 1928, forwarded the check in the eighth paragraph of this answer mentioned by mail from its Charlotte Branch to the Commercial National Bank of Statesville along with certain other checks drawn on said bank aggregating twenty thousand six hundred twenty-nine dollars and fifty-three cents (\$20,629.53), as more fully hereafter set forth. Federal Reserve Bank of Richmond denies the allegations of the ninth paragraph of the complaint, except in so far as they are herein admitted.

X.

The defendant, Federal Reserve Bank of Richmond, on the morning of April 18, 1928, at its Charlotte Branch, received from the Commercial National Bank of Statesville a printed form or remittance letter authorizing it to charge the reserve account of the Commercial National Bank of Statesville with the sum of twenty thousand five hundred sixty-one dollars and three cents (\$20,561.03). The amount of the reserve balance of the Commercial National Bank of Statesville at the opening of business on April 18, 1928, was one thousand eighty-four dollars and sixty-two cents (\$1,084.62). Certain credits and debits were made in the said account during that day and thereafter as hereafter set forth. The Federal Reserve Bank of Richmond admits that it notified the Commercial National Bank of Raleigh that it had not received actual and final payment for the check for six thousand nine hundred twenty-eight dollars and ninety-four cents (\$6,928.94) received by it from the Commercial National Bank of Raleigh and charged the amount of said check to the account of the Commercial National Bank of Raleigh. The Federal Reserve

Bank of Richmond has no knowledge or information sufficient to form a belief as to the other matters and things set forth in the tenth paragraph of the complaint and therefore denies all such allegations except in so far as they are herein admitted.

XI.

The defendant, Federal Reserve Bank of Richmond, has no knowledge or information sufficient to form a belief concerning the allegations of the eleventh paragraph of the complaint and therefore denies the same.

XII.

The defendant, Federal Reserve Bank of Richmond, admits that the Commercial National Bank of Statesville did not open for business on April 19, 1928, and that sometime after that date C. L. Williams was duly appointed receiver thereof. Federal Reserve Bank of Richmond is informed and believes that the Commercial National Bank of Statesville transacted business throughout the entire day of April 18th. Federal Reserve Bank of Richmond therefore denies that it suspended business on that date.

XIII.

The defendant, Federal Reserve Bank of Richmond, has not sufficient knowledge or information to form a belief concerning the allegations in the thirteenth paragraph of the complaint and therefore denies the same.

XIV.

The defendant, Federal Reserve Bank of Richmond, has not sufficient knowledge or information to form a belief concerning the allegations of the fourteenth paragraph of the complaint and therefore denies the same.

XV.

The defendant, Federal Reserve Bank of Richmond, denies that it acted as agent of the plaintiff in handling the check described in the complaint or in any other matter. As to the other matters and things set

forth in the fifteenth paragraph, Federal Reserve Bank of Richmond has no knowledge or information sufficient to form a belief, and therefore denies all the allegations in the fifteenth paragraph of the complaint.

XVI.

The defendant, Federal Reserve Bank of Richmond, denies the allegations of the sixteenth paragraph of the complaint in so far as they relate to itself, and in so far as they relate to other defendants says it has no knowledge or information sufficient to form a belief and therefore denies all allegations of the sixteenth paragraph of the complaint.

XVII.

The defendant, Federal Reserve Bank of Richmond, admits that it now has in its hands the sum of seventeen thousand one hundred fourteen dollars and twenty-seven cents (\$17,114.27), as is more fully hereafter set forth, and says that it is advised that the other allegations in the seventeenth paragraph of the complaint are matters of law upon which it prays the judgment of the court; but it denies all allegations of fact in said paragraph, except in so far as they are herein admitted.

FURTHER AND AFFIRMATIVE DEFENSE.

Federal Reserve Bank of Richmond alleges as a further and affirmative defense:

XVIII.

That it is and at all times hereafter mentioned was a Federal Reserve Bank organized and doing business under the laws of the United States and especially under a certain Act of Congress known as the Federal Reserve Act and that its chief office and place of business is and was in the city of Richmond in the state of Virginia, and that the district or territory assigned to it was and is the state of Maryland, a part of the state of West Virginia, the state of Virginia, the state of North Carolina, and the state of South Carolina and the District of Columbia, and that before

the time mentioned in the complaint it had established a branch in the city 182 of Charlotte in the state of North Carolina and was operating the said branch at all times in the complaint mentioned.

XIX.

The Commercial National Bank of Raleigh, defendant herein, was at all times hereafter mentioned a national banking association duly organized and doing business under the laws of the United States, and as such was a member of the Federal Reserve System and a stockholder of the Federal Reserve Bank of Richmond and maintained a reserve deposit or account with the Federal Reserve Bank of Richmond, which account was kept at the main office in Richmond, Virginia.

XX.

The Commercial National Bank of Statesville was until closed, as herein set forth, a national banking association duly organized and doing business under the laws of the United States, and as such a member of the Federal Reserve System and a stockholder of the Federal Reserve Bank of Richmond, and maintained a reserve deposit or account with the Federal Reserve Bank of Richmond, which account was kept at the Charlotte Branch of the Federal Reserve Bank of Richmond.

XXI.

Prior to the times mentioned herein the Federal Reserve Board had made and promulgated a certain regulation governing the collection of checks by Federal Reserve banks, which regulation was in force on the 14th day of April 1928 and at all times thereafter. A copy of said regulation which is known as Regulation J, Series 1928, is hereto attached, marked Exhibit I, and is made a part hereof as if it were here set forth in full.

XXII.

Prior to the times mentioned herein the Federal Reserve Bank of Richmond had duly issued a certain circular stating the terms and

conditions upon which it was authorized and willing to accept checks for collection and the manner in which said checks would be handled and collected by it, a copy of which circular had been sent to all other Federal Reserve banks and to all member banks holding stock in and maintaining reserve accounts with the Federal Reserve Bank of Richmond, including the Commercial National Bank of Raleigh and the Commercial National Bank of Statesville, both of which had acknowledged in writing receipt of the said circular. A copy of the said circular, known as No. 143, is hereto attached, marked Exhibit 2, and made a part hereof as if it were here set forth in full.

XXIII.

It was the practice and custom of the Federal Reserve Bank of Richmond to accept at its main office or any branch checks drawn upon any member banks which maintained a reserve deposit with it at the office where the depositing or forwarding bank kept its reserve account or did business, or in certain cases to accept such checks at the office with which the member bank upon which such checks were drawn did business. This practice or custom was known to the Commercial National Bank of Raleigh and the Commercial National Bank of Statesville.

XXIV.

It was the practice and custom of the Federal Reserve Bank of Richmond to forward all such checks from the office at which they were received directly to the member bank upon which they were drawn and to direct or require that bank to make remittance or settlement for such checks as it desired to pay by sending to the office at which its reserve account was kept money, or immediately collectable draft drawn on some other bank with which the remitting bank had funds on deposit, or an order or direction to charge such checks against the available reserve deposit or account of the remitting bank. This practice or custom was known to the Commercial National Bank of Statesville and the Commercial National Bank of Raleigh.

On the 16th day of April 1928 the Federal Reserve Bank of Richmond received at its Richmond Office for collection for the account of member banks in its district and other Federal Reserve banks checks drawn on the Commercial National Bank of Statesville amounting to two thousand nine hundred seventy-three dollars and ninety-five cents (\$2,973.95). The depositing banks were in accordance with the terms and conditions of the time schedule mentioned in the said Regulation and Circular entitled to receive credit for the amount of such checks in two days after receipt, subject to all other terms and conditions of the Circular and Regulation.

XXVI.

These checks were on the 16th day of April 1928 sent by mail to the Commercial National Bank of Statesville along with a letter or list commonly called a "cash letter" showing the amount of said checks and requiring settlement or remittance therefor as in Paragraph twenty-four set forth.

XXVII.

On the 16th day of April 1928 the Federal Reserve Bank of Richmond received at its Charlotte Office for collection for the account of member banks in its district and other Federal Reserve banks checks drawn on the Commercial National Bank of Statesville amounting to twenty thousand six hundred twenty-nine dollars and fifty-three cents (\$20,629.53). The depositing banks were in accordance with the terms and conditions of the time schedule and in the said Regulation and Circular given credit for the amount of such checks two days after receipt subject to all other terms and conditions of the said Circular and Regulation.

XXVIII.

These said checks were on the 16th day of April 1928 sent by mail to the Commercial National Bank of Statesville along with a letter or list, commonly called a "cash letter," showing the amount of said checks and requiring

a settlement or remittance therefor as in Paragraph twenty-four set forth.

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XXIX.

Among the checks so received and handled at the Charlotte Office was a check for the sum of six thousand nine hundred and twenty-eight dollars and ninety-four cents (\$6,928.94), which check was received from the Commercial National Bank of Raleigh for collection for its account in accordance with the terms and conditions of the said Regulation and Circular, and the Federal Reserve Bank of Richmond had no agreement with any person concerning the said check except the agreement embodied and set forth in the said Circular and Regulation, and the Federal Reserve Bank of Richmond had no notice or knowledge of any interest in or claim to such check on the part of any person other than the Commercial National Bank of Raleigh.

XXX.

On the 18th day of April 1928 the Federal Reserve Bank of Richmond received by mail from the Commercial National Bank of Statesville duly signed by its proper officer notices or forms commonly called "remittance letters" and "return item letters" as follows:

REMITTANCE LETTER

Use this form in remitting to Charlotte Branch for cash letter described below.
(REMIT SEPARATELY FOR COLLECTION ITEMS)

From

Commercial National Bank,
Statesville,
N. C.

APR. 17, 1928
(date)

To CHARLOTTE BRANCH, Federal Reserve Bank of Richmond,
CHARLOTTE, N.C.

We are remitting as indicated below

for your cash letter dated APR. 16, 1928 \$ 20,629.53

Less:

Total amount of unpaid items and protest fees 68.50

NET AMOUNT DUE \$ 20,561.03

REMITTANCE AS FOLLOWS:

Charge our reserve account \$ 20,561.03

(For use of member banks only. Be sure to insert the
net amount to be charged.)

Draft on \$

Currency shipment today as per advice mailed under
separate cover \$

D. M. Ausley, Ch.
Authorized Signature

RETURN ITEM LETTER

From

Commercial National Bank,
Statesville,
N. C.

Please use this letter in returning
items to us. List separately below
unpaid items actually returned here-
with, including protest fees, if any.

CHARLOTTE BRANCH, Federal Reserve Bank of
Richmond.

REASON FOR RETURN

AMOUNT

No Act here \$ 2.50

Insf 66.00

TOTAL 68.50

REMITTANCE LETTER

Use this form in remitting to Charlotte Branch, Federal Reserve Bank of Richmond, for cash letter described below.

From

Commercial National Bank,
Statesville,
66-140 N. C.

APR. 17, 1928
(Date)

To CHARLOTTE BRANCH, Federal Reserve Bank of Richmond,
CHARLOTTE, N. C.

We are remitting as indicated below for

RICHMOND'S cash letter dated APR. 16, 1928 \$ 2,973.95

Less:

Total amount of unpaid items and protest fees \$ 1,800.08

NET AMOUNT DUE \$ 1,173.87

REMITTANCE AS FOLLOWS:

Draft on \$

Charge our reserve account \$ 1,173.87
(For use of member banks only. Be sure to insert the net
amount to be charged.)

Currency shipment today as per advice mailed under
separate cover \$

D. M. Ausley, Ch
Authorized Signature

RETURN ITEM LETTER

APR. 18, 1928

From

Commercial National Bank,
Statesville,
66-140 N. C.

Please use this letter in returning
items. List separately below unpaid
items actually returned herewith;
including protest fees, if any. Re-
turn all items to
CHARLOTTE BRANCH, Federal Reserve Bank
of Richmond.

REASON FOR RETURN

AMOUNT

Insf.
Fee

\$ 1,797.83
2.25

TOTAL

1,800.08

Federal Reserve Bank of Richmond does not know the exact hour at which such forms were received by its Charlotte Branch, but it verily believes and therefore alleges that they were received by it by mail at or about 9:00 A. M.

These forms had been sent to the Commercial National Bank of Statesville by the Charlotte and Richmond Offices of the Federal Reserve Bank of Richmond along with the cash letters mentioned above, and were designed and intended for use by the member bank to which sent in making remittance for cash letters and for returning dishonored or unpaid checks sent in such letters.

XXXI.

At the close of business on April 17th the reserve account of the Commercial National Bank of Statesville showed a credit balance due it of one thousand eighty-four dollars and sixty-two cents (\$1,084.62). On April 18th and thereafter charges and credits were made in that account as shown below:

<u>Date</u>	<u>CREDITS</u> <u>Description</u>	<u>Amount</u>
April 18	Balance	\$ 1,084.62
18	Cash letter dated 4/16 rec'd 4/17	167.66
18	" " " 4/14 rec'd 4/16	2,631.09
18	Immediate cash letter dated 4/17	149.83
18	Currency shipment dated 4/17	5,000.00
18	Cash letter 4/14 credited Comm.Nat.Bk. Char. in error	599.85
18	Wire transfer from Wachovia Bk. & Tr. Winston-Salem	4,000.00
18	Immediate cash letter 4/17	12,500.00
19	Deferred cash letter 4/16 rec'd 4/17	1,001.48
19	" " " 4/14 rec'd 4/16	1,654.27
20	Protest fees from ck. \$1,797.83 rt.from Rd's C/L 4/16	2.25
20	Reversing debit 4/18 Rd's C/L 4/16	1,173.87
20	" " " 4/18 our C/L 4/16	20,561.03
20	Deferred cash letter 4/17 rec'd 4/18	1,330.71
26	Refund of postage on currency shipments from 3/26 to 4/25	.53

DEBITS

April 18	Interest on Discount No. 7374 & 7375	24.62
18	Our cash letter 4/16	20,561.03
18	" " " 4/16	1,173.87
18	Our collection #9431 Coupons City of Statesville	55.00
18	Deficient Reserve Penalty	122.74

April 18	Our return letter 4/18 (\$12,500 bk. draft drawn by Statesville on American Tr. Char. dishonored on account of being drawn against uncollected funds - See our credit of this day)	12,501.50
19	Our return letter of 4/18	3.66
20	Our return letter of 4/19	58.00
21	Our return letter of 4/20	242.50
28	To transfer bal. in reserve acct. to Head Office	17,114.27

The credits in said account described as for cash letters, either deferred or immediate credit, are for the amounts of checks deposited by the Commercial National Bank of Statesville for collection under the terms of the Regulation, Circular, and time schedule above described. Checks payable in Charlotte were under such time schedule credited immediately to the account of the Commercial National Bank of Statesville; checks payable elsewhere were received upon a deferred credit basis and credit in the reserve account given in accordance with the estimated time necessary for collection. All checks were received and credited subject to final payment as in the said Regulation and Circular provided. The account shows the date of the letter containing such checks, and the date on which it was received, and the date on which it is credited is the date of availability mentioned in the Circular.

The debit or charge of twenty-four dollars and sixty-two cents (\$24.62) is for interest upon notes discounted for the Commercial National Bank of Statesville on April 17th, and the proceeds of which were credited to it on that day, but according to the custom of the Federal Reserve Bank of Richmond, the discount or interest was not charged against the member bank until the following day. The other entries in said account are described in the account itself as set forth above.

XXXII.

On the 18th day of April 1928 as shown in said account the Federal Reserve Bank of Richmond received at its Charlotte Branch from the Commercial National Bank of Statesville a shipment of money or currency amounting to five thousand dollars (\$5,000.00), also an order from the

Wachovia Bank and Trust Company of Winston-Salem transferring the sum of 190 four thousand dollars (\$4,000.00) on deposit and due to it to the account of the Commercial National Bank of Statesville, also from the Commercial National Bank of Statesville a draft drawn by it on the American Trust Company of Charlotte for twelve thousand five hundred dollars (\$12,500.00). This draft was credited immediately to the account of the Commercial National Bank of Statesville subject to the terms of the Regulation and Circular mentioned above. Thereupon the Federal Reserve Bank of Richmond entered in the account of the Commercial National Bank of Statesville a charge for the amount of the two cash letters of April 16th sent to it from the Richmond and Charlotte Offices, respectively.

XXXIII.

The said draft for twelve thousand five hundred dollars (\$12,500.00) was on April 18th presented to the American Trust Company of Charlotte through the clearing house of Charlotte, but payment thereof was refused and it was protested on the said day and the amount thereof and protest fees thereon were charged to the account of the Commercial National Bank of Statesville; so that at the close of business on said day the total available credits in said account amounted to thirteen thousand four hundred twenty-nine dollars and nineteen cents (\$13,429.19), being insufficient to cover the amount of the two cash letters of April 16th aggregating twenty-one thousand seven hundred thirty-four dollars and ninety cents (\$21,734.90), which were charged against the said credits.

XXXIV.

The Federal Reserve Bank of Richmond notified the Commercial National Bank of Raleigh that it had not received final payment in actually collected funds for said check for six thousand nine hundred twenty-eight dollars and ninety-four cents (\$6,928.94) and thereafter charged the amount of said check to the account of the Commercial National Bank of Raleigh, and

likewise gave a similar notice to all other banks which had deposited any checks contained in the two cash letters of April 16th, and charged such checks to the accounts of the depositing banks. 191

XXXV.

On the dates shown in the account the Commercial National Bank of Statesville had deposited certain checks with the Federal Reserve Bank of Richmond, the amounts of which became available for credit in the reserve account of the Commercial National Bank of Statesville on April 19th and April 20th, as shown in the said account, and certain checks deposited by the Commercial National Bank of Statesville on or before April 18th were returned dishonored and unpaid and charged to it as shown in the said account, being described as return letters, so that the Federal Reserve Bank of Richmond held the balance of seventeen thousand one hundred fourteen dollars and twenty-seven cents (\$17,114.27) as shown in said account.

XXXVI.

The Federal Reserve Bank of Richmond is willing and desires, if it is proper to do so, to distribute this balance among the Commercial National Bank of Raleigh and other banks which deposited the checks contained in the two cash letters dated April 16th, or to such other persons as may be the equitable owners, in the proportion that the amount of the checks received from each such bank bears to total amount of checks in such cash letters; that is to say, to the sum of twenty-one thousand seven hundred thirty-four dollars and ninety cents (\$21,734.90); but the Federal Reserve Bank of Richmond is advised that of such checks C. L. Williams, Receiver of the Commercial National Bank of Statesville, claims that the balance stated above is payable to him as receiver of the said bank; and the Federal Reserve Bank of Richmond has been advised that if it should pay the said sum of money to the depositing banks or to the said receiver without a determination of their conflicting claims by a competent court, such payment would be

XXXVII.

(S) W. G. Wallace
Attorneys for Federal
Reserve Bank of Richmond.

George H. Keesee, being duly sworn, deposes and says that the Federal Reserve Bank of Richmond is a corporation and that he is an officer thereof, to-wit its cashier, and as such has access to and knowledge of its

records and accounts and knowledge of its business and dealings, and that he makes this affidavit because the said defendant is a corporation and he is an officer thereof, as above stated, and he has read the foregoing answer and that the allegations therein are true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

(Signed) George H. Keesee

Subscribed and sworn to before me this

16th day of February, 1929.

My commission expires

(Signed) C. Vasal Blackburn
Notary Public.