

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FIRST NATIONAL BANK OF ATLANTA,
FIRST NATIONAL BANK OF GLENWOOD,
FIRST NATIONAL BANK OF TUCKER,
ALFRED D. KENNEDY, and
EMORY L. COCKE,

Defendants.

Civil Action No. 14748

Filed: February 18, 1971

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, and under Section 4 of the Act of Congress of July 2, 1890,

as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 38 Stat. 731, as amended (15 U.S.C. § 18) and of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Each of the bank defendants has its principal place of business, transacts business, and is found within, and each of the individual defendants resides within, the Northern District of Georgia.

II

THE DEFENDANTS

3. First National Bank of Atlanta (hereinafter referred to as "First National") is made a defendant herein. First National is a banking association organized and existing under the laws of the United States of America, and has its principal place of business in Atlanta, Fulton County, Georgia.

4. First National Bank of Glenwood (hereinafter referred to as "Glenwood Bank") is made a defendant herein. Glenwood Bank is a banking association organized and existing under the laws of the United States of America, and has its principal place of business in Decatur, DeKalb County, Georgia.

5. First National Bank of Tucker (hereinafter referred to as "Tucker Bank") is made a defendant herein. Tucker Bank is a banking association organized and existing under the laws of the United States of America, and has its principal place of business in Tucker, DeKalb County, Georgia.

6. Alfred D. Kennedy is made a defendant herein.

Mr. Kennedy, a resident of Atlanta, Georgia, is a director of First National and a permanent member of its Trust Committee. Mr. Kennedy is also a stockholder of Glenwood Bank.

7. Emory L. Cocke is made a defendant herein. Mr. Cocke, a resident of Atlanta, Georgia, is a former director and presently an Honorary Director, of First National and one of its stockholders. Mr. Cocke is also a stockholder of Tucker Bank.

III

TRADE AND COMMERCE

8. Commercial banks fill an essential and unique role in the Nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrator of the Nation's check payment system. Through the making of loans to individuals and business firms, commercial banks supply a significant part of the credit requirements of the Nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of

drafts, bills, and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of cashier's checks and drafts on correspondent banks, the purchase or sale of securities for customers, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

9. First National operates banking offices providing commercial banking services only in the Atlanta area. The head office of First National is located in the City of Atlanta, in Fulton County. It operates two branch offices in adjacent DeKalb County, both located in the City of Decatur, and is affiliated with Glenwood Bank, Tucker Bank, First Bank of South DeKalb ("South DeKalb Bank"), and First National Bank of Doraville ("Doraville Bank"), all located in DeKalb County. Glenwood Bank is located in west central DeKalb County, approximately seven miles east of First National's main office. Glenwood Bank's home office is located approximately three miles from the nearest current branch office of First National and approximately two miles from South DeKalb Bank, whose merger into First National has been approved by the Comptroller of the Currency and which will be operated as a branch of First National. Tucker Bank is located in northeast DeKalb County, approximately sixteen miles from First National's main office, seven miles from the nearest branch office of First National and five miles from Doraville Bank, whose merger into First National has been approved by the Comptroller of the Currency and

which will be operated as a branch of First National. The predominant share of the business of First National's two branches and four affiliates located in DeKalb County is derived from DeKalb County.

10. First National is one of the leading commercial banks conducting business in DeKalb County. As of June 30, 1970, First National alone had total assets of \$1.0 billion, total deposits of \$698.7 million, and net loans and discounts of \$541.8 million. As of the same date, First National's two branch offices in DeKalb County had total deposits of \$36.5 million. Also as of the same date, Glenwood Bank and Tucker Bank had combined total deposits of \$18.8 million; First National's two other affiliates had combined total deposits of \$2.1 million. Together all First National's branches and affiliates in DeKalb County controlled approximately 20 per cent of total county deposits.

11. As of June 30, 1970, Glenwood Bank had total assets of \$16.3 million, total deposits of \$13.8 million, and net loans and discounts of \$8.1 million.

12. As of June 30, 1970, Tucker Bank had total assets of \$5.7 million, total deposits of \$5.0 million, and net loans and discounts of \$2.0 million.

13. Glenwood Bank was established in 1952 and operated as an independent competitor in DeKalb County until 1968. In that year, Alfred D. Kennedy, acting for and on behalf of First National, purchased more than 96 per cent of the outstanding shares of Glenwood Bank. The share purchase was made with the proceeds of a loan from First National, represented by a note payable on

demand and secured by the Glenwood Bank shares purchased. The principal amount of the loan has not been reduced and interest at the rate of one per cent per annum has been accrued but not paid. First National holds an option, evidenced by written agreement executed on or about October 3, 1969, to purchase the shares pledged as security for the loan.

14. Tucker Bank was established in 1965 and operated as an independent competitor in DeKalb County until 1969. In that year, Emory L. Cocke, acting for and on behalf of First National, purchased more than 90 per cent of the outstanding shares of Tucker Bank. The share purchase was made with the proceeds of a loan from First National, represented by a note payable on demand and secured by the Tucker Bank shares purchased. The principal amount of the loan has not been reduced and interest at the rate of one per cent per annum has been accrued but not paid. First National holds an option evidenced by written agreement executed on or about November 17, 1969, to purchase the shares pledged as security for the loan.

15. Prior to 1968, First National, Glenwood Bank, and Tucker Bank were significant competitors of each other and other commercial banks within DeKalb County. As of June 30, 1970, First National, Doraville Bank and South DeKalb Bank held approximately 13.5 per cent of total deposits held by all commercial banking offices in DeKalb County. On that date, Glenwood Bank and Tucker Bank held approximately 6.5 per cent of such deposits.

16. Since at least 1968 and continuing to the present

DeKalb County has been a concentrated banking market. As of June 30, 1970, the four largest commercial banks in DeKalb County held over 65 per cent of total county deposits. Since 1969, at which time First National exercised effective control of Glenwood Bank and Tucker Bank, First National and its four affiliates have held among them approximately 20 per cent of total deposits held by all commercial banking offices in DeKalb County. With the acquisitions of Glenwood Bank and Tucker Bank by First National, the four largest banks in DeKalb County hold over 71^{percent}% of total county deposits.

17. Customers of First National, Glenwood Bank, and Tucker Bank regularly utilize interstate communications, including the mails, telephone, and telegraph, to carry on their business with, and apply for and obtain the services provided by, these banks. Each of the defendant banks regularly utilizes interstate communications including the mails, telephone, and telegraph, and conducts business with, and provides services to, customers and other banks located in States other than Georgia. Each of the defendant banks is engaged in interstate commerce.

V

OFFENSES CHARGED

18. Beginning in 1968, the exact date being unknown to the plaintiff, and continuing thereafter up to and including the date of the filing of this complaint, Defendants First National, Glenwood Bank, and Alfred D. Kennedy have engaged in an unlawful combination and conspiracy in unreasonable restraint of the above described interstate trade and commerce in violation of Section 1

of the Sherman Act.

19. Beginning in 1969, the exact date being unknown to the plaintiff, and continuing thereafter up to and including the date of the filing of this complaint, the Defendants First National, Tucker Bank, and Emory L. Cocke have engaged in an unlawful combination and conspiracy in unreasonable restraint of the above described interstate trade and commerce in violation of Section 1 of the Sherman Act.

20. Pursuant to the aforesaid unlawful combinations and conspiracies the defendants have done the following things, among others:

(a) During 1968, Defendant First National, acting on its own behalf and through Defendant Alfred D. Kennedy, acquired more than 96 per cent of the outstanding common shares of Glenwood Bank. No application for regulatory approval of this acquisition has been filed.

(b) During 1969, Defendant First National, acting on its own behalf and through Defendant Emory L. Cocke, acquired more than 90 per cent of the outstanding common shares of Tucker Bank. No application for regulatory approval of this acquisition has been filed.

(c) Defendants First National and Tucker Bank entered into an agreement, approved by their respective Boards of Directors on or about May 14, 1970, which, if carried out, will result in the further consolidation and merger of First National and Tucker Bank under the charter of First

National and with the title First National Bank of Atlanta. The Comptroller of the Currency granted approval of the proposed merger of the Defendants on January 20, 1971.

(d) Defendants First National and Glenwood Bank have entered into an agreement, approved by their respective Boards of Directors on or about May 14, 1970, which, if carried out, will result in the further consolidation and merger of First National and Glenwood Bank under the charter of First National and with the title First National Bank of Atlanta.

21. The effect of the aforesaid acquisitions of Glenwood Bank and Tucker Bank and the aforesaid agreement to merge First National and Tucker Bank, and the aforesaid agreement to merge First National and Glenwood Bank, if approved by the Comptroller of the Currency, has been and will be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act.

VI

EFFECTS

22. The effects of the offenses alleged in paragraphs 18, 19, 20, and 21 of this complaint are, among others, the following:

(a) Actual competition and the potential for increased competition between Defendants First National, Glenwood Bank, and Tucker Bank has been and will be eliminated and unreasonably restrained;

(b) Competition generally in commercial banking in DeKalb County has been and will be substantially lessened and unreasonably restrained; and

(c) Concentration in commercial banking in DeKalb County has been and will be substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid acquisitions of Glenwood Bank and Tucker Bank by First National, pursuant to the arrangements described in paragraphs 13, 14 and 20 of this complaint, be adjudged to be unlawful and in violation of Section 1 of the Sherman Act.

2. That the aforesaid acquisitions of Glenwood Bank and Tucker Bank by First National, pursuant to the arrangements and agreements described in paragraphs 13, 14 and 20 of this complaint, be adjudged to be unlawful and in violation of Section 7 of the Clayton Act.

3. That Defendants First National, Alfred D. Kennedy, Emory L. Cocke and all persons acting on First National's behalf be required to divest themselves of all stock and other interests in Defendants Glenwood Bank and Tucker Bank heretofore acquired, under such terms as this Court may prescribe.

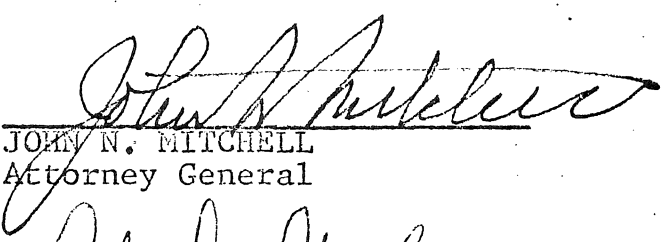
4. That the Defendants First National, Glenwood Bank, Tucker Bank, and all persons acting on their behalf be enjoined from

carrying out the aforesaid agreement of merger, or any similar plans or agreements, the effect of which would be to merge, consolidate, or in any other way combine the businesses of said defendants.

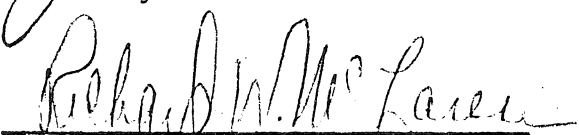
5. That the Defendant First National be enjoined for a period of ten years from the date of judgment in this action from acquiring control over or merging, consolidating or combining with any other commercial banking organization operating in DeKalb County, Georgia.

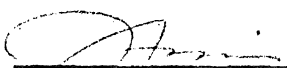
6. That the plaintiff have such other and further relief as the Court may deem just and proper.

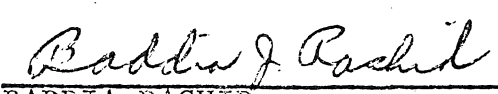
7. That the plaintiff recover the costs of this action.


JOHN N. MITCHELL
Attorney General

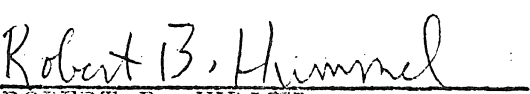
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