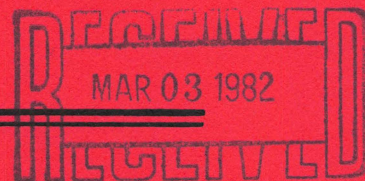


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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

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RECORD NO. 810864

GALAX SAVINGS & LOAN ASSOCIATION,

Appellant

v.

ROBERT E. GOAD and
JOYCE R. GOAD,

Appellees

APPENDIX

Raleigh M. Cooley
COOLEY & COMPTON, P.C.
Post Office Box 96
Hillsville, Virginia 24343

W. H. Jolly
Post Office Box 518
Galax, Virginia 24333

L. Harvey Neff, Jr.
Post Office Box 565
Galax, Virginia 24333

Counsel for Appellant

Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY

BANK OF HENDERSONVILLE
Hendersonville, Tennessee

Plaintiff

vs.

GALAX SAVINGS AND LOAN ASSOCIATION

SERVE: LANNY ASTOR KYLE
REGISTERED AGENT
118 North Main Street
Galax, Virginia

Defendant

MOTION FOR

JUDGMENT

TO THE HONORABLE DALE W. LARUE, JUDGE OF SAID COURT:

Comes now the Plaintiff, Bank of Hendersonville, by counsel, and moves the Court for judgment against the Defendant on the grounds and in the amount as hereinafter set forth.

1. On or about the 13th day of October, 1978, the Defendant, as drawer, issued a draft or check drawn on the First National Bank of Galax, Virginia, dated October 13, 1978, and payable to National Worm Ranchers, Inc. in the amount of \$3,995.00. On October 21, 1978, this check was properly endorsed by the Secretary-Treasurer of National Worm Ranchers, Inc. for deposit and deposited in the account of the National Worm Ranchers, Inc. in the Plaintiff bank.

2. As a result of this deposit Plaintiff honored checks drawn by National Worm Ranchers, Inc. in the full amount of the said deposit and gave full value for the said check in good faith and without notice that the said check was overdue, had been dishonored or that there existed any defense against it or claim to it on the part of any person.

3. After having given full value for the said check in good faith and without notice as aforesaid, on November 3, 1978.

Plaintiff was notified by the United American Bank in Nashville, Tennessee, that the said check would not be honored but was being returned as a result of a stop-payment order issued by the drawer, Defendant Galax Savings and Loan Association. Defendant confirmed the said stop-payment order and refused to pay its obligation upon the said check. By correspondence of January 10, 1979, Plaintiff, by counsel, again demanded payment of the said check but the Defendant refused and continues to refuse to honor the said check.

4. Plaintiff specifically alleges that under the laws of the Commonwealth of Virginia it is a holder in due course of the said check; that Plaintiff took the said check free from all claims to it on the part of the Defendant; and that the Defendant as the maker or drawer is obligated to pay the said check to Plaintiff according to its tenor under the provisions of the Uniform Commercial Code as codified in Virginia.

WHEREFORE, Plaintiff prays judgment against the Defendant in the amount of \$3,995.00 plus interest, attorney's fees and its costs in this behalf expended.

BANK OF HENDERSONVILLE

By Fred M. Werth, Jr.
Of Counsel

GILMER, ADLER, INGRAM,
RUTHERLAND & HUTTON
Attorneys at Law
209-1/2 West Oldtown Street
Galax, Virginia 24333

By: Fred M. Werth, Jr.
Of Counsel for Plaintiff

VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY

BANK OF HENDERSONVILLE,

Plaintiff,

vs.

THIRD-PARTY
MOTION FOR JUDGMENT

GALAX SAVINGS AND LOAN ASSOCIATION,

Defendant,

and

ROBERT E. GOAD and
JOYCE E. GOAD, his wife
Route 4
Galax (Carroll County) Virginia,
Third Party Defendants.

Comes now the Defendant, GALAX SAVINGS AND LOAN ASSOCIATION, by Counsel, and files the following Third-Party Motion for Judgment against ROBERT E. GOAD and JOYCE R. GOAD, his wife, Third Party Defendants, and says:

I.

That the Plaintiff BANK OF HENDERSONVILLE, Hendersonville, Tennessee, has filed a Motion for Judgment against the Defendant, GALAX SAVINGS AND LOAN ASSOCIATION, and has made a claim against the Defendant in the sum of \$3,995.00; and that the claim of the Plaintiff is as shown by a copy of said Motion for Judgment hereto annexed, marked "Exhibit A" and made a part of this Third-Party Motion for Judgment.

II.

That your Defendant, GALAX SAVINGS AND LOAN ASSOCIATION,

avers that the Thirc-Party Defendants, ROBERT E. GOAD and JOYCE R. GOAD, his wife, had requested of this principal Defendant to issue two (2) checks, one dated October 13, 1978, payable to NATIONAL WORM RANCHERS, INC., in the sum of \$3,995.00; and a Cashier's check dated October 24, 1978 on THE FIRST NATIONAL BANK, in the sum of \$3,995.00, payable to NATIONAL WORM RANCHERS, INC.; and that said ROBERT E. GOAD and JOYCE R. GOAD, his wife, on the 24th day of October, 1978, requested the principal Defendant, GALAX SAVINGS AND LOAN ASSOCIATION, to issue a stop-payment order on the check upon which the BANK OF HENDERSONVILLE sues this Defendant.

III.

That your Defendant, GALAX SAVINGS AND LOAN ASSOCIATION, avers that the Thrid-Party Defendants, ROBERT E. GOAD and JOYCE R. GOAD, his wife, had this Defendant to act as their agent and at the direction in the issuance of the check upon which the BANK OF HENDERSONVILLE sues, and also to issue the stop-payment order and by reason of acting as the agent of said ROBERT E. GOAD and JOYCE R. GOAD, his wife, that the Third-Party Defendants should answer and pay all of the Plaintiff's claim; if either the principal Defendant, GALAX SAVINGS AND LOAN ASSOCIATION or the Third-Party Defendants, ROBERT E. GOAD and JOYCE R. GOAD, hiw wife, are liable to the Bank of Hendersonville for any sum whatsoever.

IV.

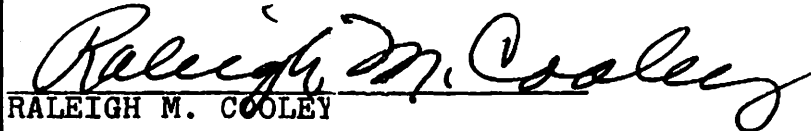
WHEREFORE, your Defendant, GALAX SAVINGS AND LOAN ASSOCIATION, moves the Circuit Court of Carroll County for a Judgment against ROBERT E. GOAD and JOYCE R. GOAD, his wife, Third-Party Defendants to indemnify the Defendant for any Judgment which may

be entered against it in this action, and for any sums which it might suffer as a result thereof.

GALAX SAVINGS AND LOAN ASSOCIATION,

By Counsel

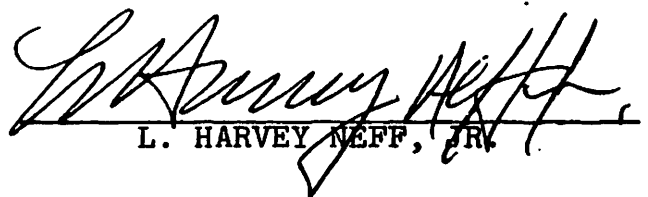

L. HARVEY NEFF, JR.


RALEIGH M. COOLEY

Counsel for GALAX SAVINGS AND LOAN ASSOCIATION

C E R T I F I C A T E

I, L. HARVEY NEFF, JR. Counsel for GALAX SAVINGS AND LOAN ASSOCIATION, do hereby certify that I mailed a copy of the foregoing THIRD-PARTY MOTION FOR JUDGMENT to FREDRICK M. WERTH, JR., Attorney at Law, 209-1/2 West Oldtown Street, Galax, Virginia, this 4th day of January, 1980.


L. HARVEY NEFF, JR.

VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY

BANK OF HENDERSONVILLE

Plaintiff,

vs.

GROUND OF DEFENSE

GALAX SAVINGS AND LOAN ASSOCIATION

Defendant

Comes now the defendant, Galax Savings and Loan Association, by counsel, for its grounds of defense to a motion for judgment filed against it by the Bank of Hendersonville and says:

I.

That this defendant does not deny that on the 13th day of October, 1978, that it issued a check payable to the National Worm Ranchers, Inc. in the amount of \$3,995.00, but it further says that at the time it issued said check it was done at the instance and request of its customers, Robert E. Goad and Joyce R. Goad, his wife, and that this defendant did in fact debit said Goads' savings account in the amount of said check. That the date of deposit alleged in the motion for judgment is not known to this defendant, and this defendant calls for strict proof of same, and denies the remaining allegation of said motion.

II.

That this defendant denies the allegations of Paragraph 2 of the motion for judgment and further says that the Bank of Hendersonville knew of the financial and perilous condition of the National Worm Ranchers, Inc., and that it was charged with

the knowledge of the insolvency and their fraudulent and deceptive actions and activities, and denies that the plaintiff comes into Court in good faith without notice, and further says that the plaintiff did not give full value for the amount sued upon.

III.

That this defendant denies the plaintiff gave good value in good faith of the aforesaid check, and further says that the plaintiff did not follow usual, accepted practices in the clearing of the check, clearing house custom, and further says that the said Bank of Hendersonville is not entitled to recover of it any sum whatsoever.

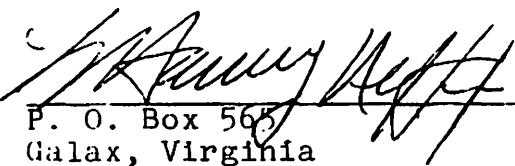
IV.

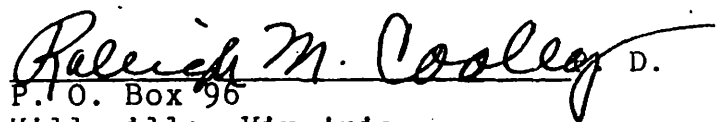
That this defendant denies the allegations of Paragraph 4 and says that the same is an allegation of law, and further says that the plaintiff is not entitled to recover against this defendant.

WHEREFORE, this defendant prays judgment on this its grounds of defense.

GALAX SAVINGS AND LOAN
ASSOCIATION

By Counsel

 P. D.
P. O. Box 565
Galax, Virginia

 D.
P. O. Box 96
Hillsville, Virginia

C E R T I F I C A T E

I, L. Harvey Weff, Jr., Counsel for Galax Savings and Loan Association, do hereby certify that I mailed a copy of the foregoing grounds of defense to Fredrick M. Werth, Jr., Attorney at Law, 209-1/2 West Oldtown Street, Galax, Virginia, this the 4th day of January, 1980.

L. Harvey Weff, Jr.

VIRGINIA:

IN THE CIRCUIT COURT OF CARROLL COUNTY

BANK OF HENDERSONVILLE,

Plaintiff.

y.

GALAX SAVINGS AND LOAN ASSOICATION.

Defendant and Third-Party
Plaintiff.

RESPONSIVE
PLEADING OF
THIRD-PARTY
DEFENDANTS

v.

ROBERT E. GOAD and
JOYCE E. GOAD,

Third-Party Defendants.

TO THE HONORABLE DALE W. LARUE, JUDGE OF SAID COURT:

For their answer to the Third-Party Motion For Judgment filed against them, these third-party defendants, Robert E. Goad and Joyce E. Goad, now come and say:

1. The allegations of paragraph 1 of the Third-Party Motion For Judgment are admitted.

2. For their answer to paragraph 2, the third-party defendants allege that the original check dated October 13, 1978, was issued by Galax Savings and Loan Association (Galax) and at the time said check was issued Galax debited these defendant's account in the sum of said check, thereby, in effect, issuing a certified check which was immediately charged to the account of the undersigned. As to the initial stop-payment order, it is alleged that these defendants were notified by Lois Higgins, an employee and agent of Galax, that Galax's original check of October 13, 1978, had been lost and that they (these defendants) should stop payment thereon. These defendants acted on the advice and counsel of Galax and its employees in participating in the

alleged stop-payment order which apparently forms the basis of the plaintiff's claim against Galax. The allegations of said paragraph are denied insofar as the same allege that the stop payment order and the cashier's check of October 24, 1978, occurred and was issued on the same date.

3. The allegations of paragraph 3 are denied, and it is alleged that the original check issued by Galax (not these defendants) on October 13, 1978, at which time these defendant's account was debited, amounted to an acceptance and release.

4. The remaining allegations of said Third-Party Motion For Judgment are denied and all allegations thereof not herein expressly admitted are hereby denied.

And now having fully responded to said Third-Party Motion For Judgment these defendants pray to be hence dismissed with their proper costs in their behalf expended.

ROBERT E. GOAD and JOYCE E. GOAD

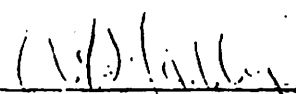
By

W. H. Jolly
Counsel

W. H. Jolly, Esquire
JOLLY & FRALIN
208 North Main Street
Galax, Virginia 24333

Counsel for Robert E. Goad and Joyce E. Goad

The undersigned, of Counsel for Robert E. Goad and Joyce E. Goad, hereby certifies that on this 17th day of January, 1980, a true and correct copy of the foregoing Responsive Pleading was mailed to L. Harvey Neff, Jr., Esquire, Washington Street, Galax, Virginia 24333 and to Raleigh M. Cooley, P. O. Box 96, Hillsville, Virginia 24343, Counsel of Record for Galax Savings and Loan Association and to Fred M. Werth, Jr., Esquire, 209-1/2 Oldtown Street, Galax, Virginia 24333, Counsel of Record for Plaintiff.



Of Counsel for Robert E. Goad
and Joyce E. Goad

1.
2.
3. VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY
4. BANK OF HENDERSONVILLE
5. V EVIDENCE DEPOSITION
6. GALAX SAVINGS AND LOAN ASSOCIATION
7. V
8. ROBERT E. GOAD
9. AND
10. JOYCE E. GOAD

11.
12. The deposition of Robert E. Goad taken before
13. Cloatine H. Henley, a notary public in and for the State
14. of Virginia, at the law offices of Cooley & Compton in
15. Hillsville, Virginia, on the 19th day of December, 1980,
16. pursuant to agreement of counsel, for purposes of evidence
17. in the above entitled action now pending in the Circuit
18. Court of Carroll County.

19. APPEARANCES: PETER KANE, COUNSEL FOR BANK OF HENDERSONVILLE
20. RALEIGH M. COOLEY AND L. H. NEFF, JR., COUNSEL
21. FOR GALAX SAVINGS & LOAN ASSOCIATION

22. ROBERT E. GOAD, IN PERSON AND BY
23. W. H. JOLLY, COUNSEL

24. Reported by: Mrs. Cloatine H. Henley
25. P. O. Box 183
26. Hillsville, VA. 24343

1.

2.

3.

ROBERT EARL GOAD

4.

Robert Earl Goad, a legal and competent witness, after
being sworn, testifies as follows:

5.

6.

DIRECT EXAMINATION BY MR. COOLEY:

7.

Q- Mr. Goad, for the record your name is Robert Earl Goad,
is that right?

8.

9.

A- That's right.

10.

Q- And you are one of the third parties defendant in this
cause of action?

11.

12.

A- Yes.

13.

Q- Where do you live, Mr. Goad?

14.

A- Rt. 4, Box 26, Galax, Virginia.

15.

Q- Mr. Goad, sometime back in last October did you have
some sort of business relationship with National Worm
Ranchers, Inc.?

16.

17.

18.

A- Not last October. It was either October before that or--

19.

Q- What about October of 78? I'm sorry.

20.

A- Yes.

21.

Q- I want to rephrase that, back in October, 1978?

22.

A- Yes.

23.

Q- Would you just describe it a little bit, Mr. Goad, what
it was?

24.

25.

A- Yes. This was an agreement I had with National Worm

26.

- 1.
2. Ranchers in which they would install worm bins, provide
3. all the equipment and assistance and so forth and market
4. the worms in exchange for a fee of \$3,995.00 I believe it
5. was.
6. Q- Now, at this time you owed National Worm Ranchers
7. \$3,995.00?
8. A- Once the contract was executed and they installed the
9. bins.
10. Q- You were going to pay that money, is that right?
11. A- Yes.
12. Q- How were you going to do it?
13. A- In one lump sum.
14. Q- Did you have a savings account with the Galax Savings
15. & Loan Association?
16. A- Yes.
17. Q- Were you going to use that account, the funds from that
18. account to pay this?
19. A- Yes. I did use that account.
20. Q- Just tell us how that took place? How did you go about
21. paying that money?
22. A- I asked the wife to go to the Savings & Loan and get
23. a check; I guess a certified check, for the National
24. Worm Ranchers. She did that on one day and it was two
25. or three days later that the people came and executed
26. their portion of the contract and I gave them the check.

1.

2.

Q- She went down to the savings and loan and got the check,
is that right?

3.

4.

A- Yes.

5.

Q- And brought the check back and gave it to you?

6.

A- Yes.

7.

Q- And you personally delivered it to personal represent-
atives of National Worm Ranchers?

8.

9.

A- Yes.

10.

Q- Do you remember how this check was made out?

11.

A- To National Worm Ranchers, Inc., I believe.

12.

Q- It was a check of the Savings & Loan Association?

13.

A- Yes.

14.

Q- This was on or about I believe October 17th, something
like that?

15.

16.

A- Yes, around that time.

17.

Q- Did you shortly after that receive some message or
communication or telephone call that something had gone
afoul with the check? It had been lost or something?

18.

19.

20.

A- Yes. I received a telephone call while I was at work
from Mrs. Higgins of the Savings & Loan. I don't recall
the exact wording but it was in essence that the Savings
& Loan had received communication from National Worm
Ranchers to the effect that the check that I had given
those representatives had been lost, requesting that the
payment on the check be stopped and Mrs. Higgins and I

21.

22.

23.

24.

25.

26.

1. discussed it for just a few minutes. She described the
2. way that she had been told the check had been lost; that
3. a bank deposit slip had been made up, the person who was
4. to take it to the bank took it to the bank but when they
5. got there my check was not with it and we discussed stopping
6. payment of the check. I asked if it could be done. She
7. said "Yes, it can be done." I said, "Well, it seems reason-
8. able to go ahead and stop payment if the check's been lost,
9. so go ahead and stop payment." She said, "I can't do it.
10. You are going to have to do it" so I asked if I had to do
11. it personally or if the wife could come and do it and she
12. said well, either one, so I called the wife and told her
13. the situation and asked her whenever she got around to it
14. to go up and stop payment on the check.
15.

16. Q- Alright, you asked her to go down to the Savings & Loan
17. and to exercise this, whatever had to be done, to stop
18. payment on the check?

19. A- Yes.

20. Q- Everything that was done, your wife, Joyce, going down
21. and stopping payment, this was all done in agreement
22. and with the understanding this was what you were
23. suppose to do?

24. A- Yes.

25. Q- And what else did you understand was to be done after
26. payment was stopped on the first check?

- 1.
2. A- That payment would be stopped on the first check and
3. another check issued to Worm Ranchers.
4. Q- To replace the check?
5. A- To replace the original check.
6. Q- You were working at a job somewhere?
7. A- Yes.
8. Q- Where were you working?
9. A- Southwestern Virginia Training Center.
10. Q- And you didn't want to leave your work to go to the
11. Savings & Loan and do this?
12. A- Right.
13. Q- And you asked that your wife do this?
14. A- Sure.
15. Q- On behalf of both of you?
16. A- Yes.
17. Q- Going back just a little bit here, after you had been
18. informed that the check had been lost did you communicate
19. with somebody at the Worm Ranch people?
20. A- On the original check, no, not that I recall.
21. Q- Didn't you call to see if they were representatives of
22. the Worm Ranchers to pick up this second check?
23. A- The second check, yes. Two or three days after I had
24. received the telephone call from Mrs. Higgins and I
25. don't remember because that's quite sometime ago; but
26. I believe about two or three days after this telephone

1. conversation with Mrs. Higgins, two gentlemen came to my
2. office, said they were representing National Worm Ranchers,
3. Inc., that they understood the payment had been stopped on
4. the first check, they were here to pick up this second
5. check, a check to replace the first one, then I did call
6. the National Worm Ranchers to verify that they were who
7. they said they were.
8.

9. Q- Did you work out an appointment with them through the
10. Savings & Loan Association?

11. A- Well, there again, I asked my wife to do that.

12. Q- Had you received any information of the financial
13. conditions or problems of National Worm Ranchers?

14. A- Not at that time.

15. Q- Do you remember the names of the two people from
16. National Worm who were in your office?

17. A- No. I don't. That day I wrote their names down, called
18. the company, they verified their identity and their
19. association with the company and I didn't record their
20. names. Just threw it away.

21. Q- Do you remember who you talked to when you made your
22. telephone call?

23. A- I believe it was Mrs. Christian, as I recall, the wife
24. of the president of the company.

25. Q- Do you have a record of your phone call?

26. A- I doubt seriously.

1.

2. CROSS EXAMINATION BY MR. JOLLY:

3. Q- Mr. Goad, do you know, are you familiar with the law
4. applicable to stop payment orders on checks? Have you
5. ever had any experience stopping payment on a check?

6. A- I'm not at all familiar with the laws. I can't ever
7. recall having stopped payment on a check before.

8. Q- When you talked to Mrs. Higgins was any explanation
9. made to you by her that if payment was improperly
10. stopped that you would be liable?

11. A- No, Sir.

12. Q- Was it ever mentioned that any additional funds would
13. be taken out of your account?

14. A- Not at any time.

15. Q- Do you know whose check was written for the second check
16. whose check it was? Did you ever see it?

17. A- I never saw it and it was my understanding, which nobody
18. ever clarified differently, that the money from that
19. second check would not come from my funds.

20. CROSS EXAMINATION BY MR. NEFF:

21. Q- Who did you have that understanding with?

22. A- In the absence of any explanation whatsoever from the
23. bank officials that was my understanding.

24. Q- They didn't say that they were going to pay it did they?

25. A- They never said that I would pay it either because if
26.

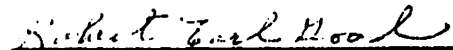
1.

2. they had I would not have authorized additional funds to
3. be withdrawn from my account for that purpose.

4. Q- But you understood from Mrs. Higgins that the Savings &
5. Loan couldn't stop payment on the check?

6. A- Yes. She said that I would have to do it as I said before.
7. (Signature waived.)

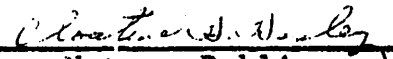
8.



9.

Robert Earl Goad

10.

By 
Notary Public

11.

12.

STATE OF VIRGINIA

13.

14.

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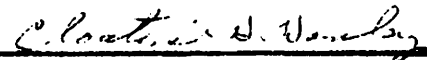
25.

26.

I, Cloatine H. Henley, a notary public in and for
the State of Virginia, do certify that the foregoing
deposition was taken by me on the 19th day of December,
1980 at the law offices of Cooley & Compton in Hillsville,
Virginia, and thereafter I have reduced the same to writing

Given under my hand this 2nd day of January, 1981.

My commission expires November 30, 1984.



NOTARY PUBLIC

VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY

BANK OF HENDERSONVILLE

vs.

GALAX SAVINGS AND LOAN ASSOCIATION

vs.

ROBERT E. GOAD, et als.

M E M O R A N D U M O P I N I O N

This is an action brought by the Bank of Hendersonville, Hendersonville, Tennessee, against the Galax Savings and Loan Association to recover on a check in the amount of \$3,995.00, deposited by it to the account of the Payee, National Worm Ranchers, Inc., drawn on the First National Bank of Galax, Virginia, on the 13th day of October, 1978, by the Galax Savings and Loan Association of Galax, Virginia, on which payment was stopped by the Galax Savings and Loan Association on the 23rd day of October, 1978.

After the action was instituted, the Galax Savings and Loan Association interpleaded Robert Earl Goad and Joyce E. Goad as third party defendants.

By agreement, the case was tried by the Court, sitting without a jury.

From the evidence, the Court finds the following facts:

By reason of an immaterial antecedent business transaction, Mr. and Mrs. Goad were indebted to National Worm Ranchers, Inc., in the amount of \$3,995.00. They desired to pay this account from an account which they had with the Galax Savings and Loan Association.

On October 13, 1978, Mrs. Goad went to the office of the Galax Savings and Loan Association and signed a withdrawal document for the sum of \$3,995.00; thereupon, the Galax Savings and Loan Association debited the Goad account \$3,995.00 and issued its check on its account at the First National Bank of Galax, Virginia, in the amount of \$3,995.00, payable to National Worm Ranchers, Inc., which, in turn, the Goads presented to National Worm Ranchers, Inc., who, in turn, deposited it to their account with the Bank of Hendersonville.

On October 21, 1978, L. A. Kyle, the chief executive officer of the Galax Savings and Loan Association received a telephone call from a person reportedly representing National Worm Ranchers, Inc., who informed Mr. Kyle that the aforementioned check had been lost. He referred the matter to Mrs. Lois Higgins, an employee of the Galax Savings and Loan Association. Mr. Kyle was suspicious of the communication which he had received but failed to communicate his suspicions to anyone. Mr. Kyle instructed Mrs. Higgins to contact the Goads and advise them of the information he had received and request that they authorize a stop payment on the aforementioned check. On October 23, 1978, a Mr. Nuckolls, on behalf of the Galax Savings and Loan Association stopped payment on said check.

On October 24, 1978, Mrs. Goad, in pursuance of the telephone call on October 21st, went to the office of the Galax Savings and Loan Association and indicated to Mrs. Higgins that it was agreeable with she and her husband to stop payment on the said check (which had already been done on the preceeding day).

On the same day without signing or being requested to sign another withdrawal document, Galax Savings and Loan Association issued a second check on the same account as the first and in the same amount and handed it to Mrs. Goad, who, in turn, handed it to representatives of National Worm Ranchers, Inc. Thereupon, said representatives requested a certified check in lieu of the one which had been handed them. Without further discussion, Mr. Nuckolls of the Galax Savings and Loan Association accompanied said representatives to the First National Bank where he obtained a cashier's check in exchange for the check previously issued by the Galax Savings and Loan Association and handed it to said representatives.

Prior to the stop payment order of the first check, the account of National Worm Ranchers, Inc., with the Bank of Hendersonville had been depleted.

No one with Galax Savings and Loan Association advised the Goads at any time that they could incur additional liability by reason of the issuance of the second check, nor had the Goads had any previous knowledge or experience with stopping payment on a check. The Goad account at Galax Savings and Loan Association was not debited on the issuance of the second check, nor was it intended that the same be debited a second time.

On these facts, the Court makes the following conclusions of law:

(1) The Bank of Hendersonville is entitled to judgment against the Galax Savings and Loan Association in the principle amount of \$3,995.00 with interest at 8% per annum from October 23, 1978, and its costs herein expended. Neither the defendant nor the third party defendants seriously question this.

(2) The Galax Savings and Loan Association is not entitled to judgment against the third party defendants, but they, the third party defendants, are entitled to recover their costs by them herein expended.

The Galax Savings and Loan Association and the Goads occupy a debtor-creditor relationship. The Galax Savings and Loan Association neither asked for nor were given either written or oral authorization by the Goads to debit their account for the second time. Consequently the Galax Savings and Loan Association was not acting as agents for the Goads when they gave the cashier's check to representative of National Worm Ranchers, Inc. Galax Savings and Loan Association had superior knowledge of the consequences of their actions and, even if agents of the Goads, they were negligent in not advising the Goads of the risks, and particularly so, since Mr. Kyle, an experienced banker, had uncommunicated suspicions concerning the transaction.

The whole transaction, except the initial signing of the original withdrawal document, was under the control of the Galax Savings and Loan Association. As between innocent parties clearly the Galax Savings and Loan Association must bear the loss and particularly so since the Goads instigated no action from which the loss resulted.

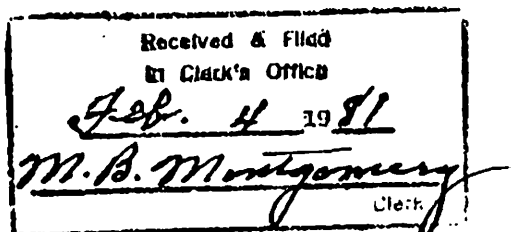
Considering the whole sequence of events, the Galax Savings and Loan Association should be and are estopped in law and in equity from passing the loss to its customers, the Goads.

Mr. Kane will please draft a Judgment Order in accordance herewith and after submission to other counsel of record, submit it to the Court for entry.

The Clerk, on the filing of this Memorandum Opinion, will forward attested copies hereof to all counsel of record.

This 4th day of February, 1981.

Dale W. Lachar
JUDGE



A TRUE COPY:

TESTE: *M.B. Montgomery* CLERK
Circuit Court of Carroll County

BANK OF HENDERSONVILLE,

Plaintiff

v.

GALAX SAVINGS AND LOAN ASSOCIATION,

Defendant

v.

ROBERT E. GOAD and
JOYCE E. GOAD,

Third-Party Defendants

FINAL
JUDGMENT

On the 11th day of December, 1980, came the Plaintiff in the above-styled action, by its agent and employee, and by counsel, and likewise came the Defendant, by its agent and employee, and by counsel, and the Third- Party Defendants, in person and by counsel, and the issue here joined was tried to the Court.

WHEREUPON, after opening statements on behalf of the parties, the Plaintiff put on its evidence, including testimony and exhibits, and rested. The Defendant, Galax Savings and Loan Association, by counsel, moved to strike the Plaintiff's evidence and enter Summary Judgment for it. The Court overruled said motion, and the Defendants proceeded to offer their evidence, including testimony and exhibits. The matter was then continued to December 19, 1980 by agreement of all the parties and by consent of the Court. On December 19, 1980, the Defendant called Robert E. Goad as an adverse witness and his de bene esse deposition was taken to be offered on behalf of Galax Savings and Loan Association. Upon the submission of this deposition the Defendant rested. The Third-Party Defendants, by counsel, elected not to offer any evidence. The parties, by counsel, then submitted briefs, and the matter was argued by counsel.

WHEREUPON, having maturely considered the evidence, the exhibits, the briefs and the arguments, the Court doth find that the Bank of Hendersonville is entitled to judgment against the Defendant, Galax Savings and Loan Association, but that the Galax Savings and Loan Association is not entitled to judgment against the Third-Party Defendants, Robert E. Goad and Joyce E. Goad. Therefore, it is

ADJUDGED, ORDERED and DECREED that the Plaintiff, Bank of Hendersonville, recover and have Judgment against the Defendant, Galax Savings and Loan Association, in the principal amount of \$3,995.00 with interest at 8 per cent per annum from October 23, 1978, until paid, plus its costs of _____ herein expended. And it is further

ADJUDGED, ORDERED and DECREED that the Galax Savings and Loan Association, Defendant and Third-Party Plaintiff, recover nothing against the Third-Party Defendants, Robert E. Goad and Joyce E. Goad, and that the Third-Party Defendants be granted a Judgment of Dismissal with their costs of _____ by them herein expended against the Galax Savings and Loan Association.

AND THE DEFENDANT, Galax Savings and Loan Association, by counsel, having indicated its intention to appeal from this Judgment, but only as to this Court's ruling against Defendant in the Third-Party claim, and having moved for a suspension of execution of this Judgment pertaining to the Third-Party claim pending action thereon by the Supreme Court, it is further

ORDERED that execution of this Judgment pertaining to the Third-Party claim be and it is hereby suspended for a period of 30 days and thereafter until the Supreme Court acts on Defendant's Petition for Appeal, provided that within said period of 30 days Defendant files with the Clerk of this Court an appeal bond in the penalty of 8,000⁰⁰, with surety to be approved by this Court,

conditioned according to law; and it is further

ORDERED that the transcript of testimony taken at the hearing before this Court on December 11, 1980, and the de bene esse deposition taken on December 19, 1980, be made a part of the record on this case, provided that said transcript be filed in the office of the Clerk of the Court within sixty (60) days from the date of this Order.

ENTERED this 11 day of March, 1981.

JUDGE

REQUESTED:

E. Peter Kane

E. Peter Kane
Counsel for Plaintiff, Bank of Hendersonville

W. H. Jolly

W. H. Jolly
Counsel for Third-Party Defendants, Robert E. Goad and Joyce E. Goad

SEEN AND OBJECTED TO:

Raleigh Cooley

L. Harvey Neff, Jr.
Counsel for Defendant,
Galax Savings and Loan Association

ASSIGNMENT OF ERROR

That the Trial Court erred when it ruled in its order dated March 11, 1981, after the third-party defendants, Robert E. and Joyce R. Goad, had withdrawn from their savings account the sum of Three Thousand Nine Hundred Ninety-Five and No/100 Dollars (\$3,995.00) and directed that a check be issued to the National Worm Ranchers, Inc., and, subsequently, advised and directed the Savings and Loan to stop payment on the said check, which was done, and issue a replacement check, which replacement check was converted into a cashier's check and paid by the Savings and Loan Association, that the said third-party defendants had instigated no action from which loss resulted and was, therefore, not liable to the Galax Savings and Loan Association for the amount sued for even though the said Savings and Loan Association was liable to the Bank of Hendersonville.

1. (Court Reporter sworn.)

2. THE COURT : Does any party desire the rule to be
3. applied?

4. MR. NEFF: No, sir.

5. THE COURT: For the record in this case, the Bank
6. of Hendersonville against Galax Savings and Loan Associa-
7. tion and against the third-party defendant, it is the
8. agreement of all the parties that a jury be waived and
9. the matter be tried before the Court, sitting without a
10. jury. You may proceed, Mr. Kane, if you desire to make
11. a statement.

12. OPENING STATEMENT BY MR. E. PETER KANE, COUNSEL FOR THE
13. PLAINTIFF:

14. Just briefly, Your Honor, that this case is a
15. case concerning a check. The drawer of the check is the
16. defendant, Galax Savings and Loan. The Plaintiff in the
17. case is the Bank of Hendersonville. We think the evidence
18. will show a holder in due course to that check at a given
19. value of faith, without notice of any claim or defense,
20. subsequent to giving that value, the stop payment order
21. was issued by the Galax Savings and Loan of the check.
22. When the check cleared through banking circles, it was
23. not paid. The Bank of Hendersonville is therefore out
24. the money it paid in value for that check. It is here to

1. account and had the check he had written certified or turned
2. it in and they wrote a cashier's check, payable to Worm
3. Ranchers. It later turned out that the first check was
4. cashed and the second cashier's check was also cashed.
5. The evidence will be that nobody at Galax Savings and Loan
6. that talked to the Goads ever told them or ever intended
7. to charge the Goads account for an additional \$3,995.00
8. and in point of fact, their account was debited at the
9. time the first check was written. Now they have brought
10. us in as third-party defendants, claiming that if they
11. owe the Bank of Hendersonville, we owe them. I submit
12. to the Court after the evidence is in, I think it's a
13. matter of law, there's no responsibility whatsoever on
14. the Goads.

15. THE COURT: Call your first witness please.

16.

17. HARVEY NELSON, first being duly sworn, was examined
18. and testified as follows:

19. DIRECT EXAMINATION BY MR. E. PETER KANE, COUNSEL FOR THE
20. PLAINTIFF:

21. Q You've previously been sworn, Mr. Nelson, would you
22. please identify yourself to the Court?

23. A My name is Harvey Nelson. I'm the assistant vice
24. president of the Bank of Hendersonville.

25. Q Is that the same Bank of Hendersonville that is the
26.

1. Plaintiff in this action?
2. A It is.
3. Q Where is that located, sir?
4. A In Hendersonville, Tennessee. Roughly 17 miles
5. northeast of Nashville, Tennessee.
6. Q All right, sir, do your bank records indicate that
7. you received a check drawn by Galax Savings and Loan
8. Association for \$3,995.00?
9. A We do.
10. Q Do you have that check?
11. A Yes.
12. Q We offer this check as Plaintiff's Exhibit #1.
13. All right, Mr. Nelson, can you tell the court when
14. your bank took that check in deposit and in what
15. account it was deposited in?
16. A Our records indicate that the check was deposited
17. after 2 o'clock on October the 20th, 1978, which
18. was a Friday afternoon. Since the Bank balanced
19. its windows at 2, it would go on the business of
20. October the 21st. We're a country bank and we're
21. open on Saturday morning.
22. Q All right. And in whose account was this deposited?
23. A The account of National Worm Ranchers, Inc., was
24. credited with the \$3,995.00.
25. Q Was that the payee on that check?
- 26.

1. A It is.

2. Q All right. After taking in that check, did National
3. Worm Ranchers then draw checks against that account
4. and in fact against that balance?

5. A Our records indicate that from the time of the
6. deposit there was some 12 or 13 checks drawn into
7. the funds, were drawn out, somewhere around the,
8. I believe it was around the 31st of October when the
9. rest of the funds were drawn out.

10. Q So after the depositing of these funds, the account
11. was liquidated by checks drawn against it by Na-
12. tional Worm Ranchers. Is that right?

13. A That's correct.

14. Q All right. Up until this point in time, had you
15. received any notice of any type, either written or
16. oral, from any official of the drawer, that is the
17. Galax Savings and Loan Association, that there was
18. any defense or claim to this check?

19. A The first time that we knew anything about there
20. being any problems with the check whatsoever was
21. on October 31st at which time our correspondent
22. in Atlanta, Georgia, the C & S Bank, notified our
23. correspondent, United American Bank in Nashville
24. and they in turn notified us November 3rd, and we
25. received the check back November the 6th.
26.

1. Q All right. They notified you what?
2. A That the check was coming back, payment stopped.
3. Q All right. Is there a notation of that?
4. A It is so indicated on the back of the check with
5. the bank code where it was notified November 3rd,
6. 1978, the party who was notified and signed by
7. the United American Bank.
8. Q And I believe that it's stamped on the front
9. payment stopped. Is that right?
10. A Payment stopped, correct.
11. Q Did you then subsequently learn that the drawer,
12. Galax Savings and Loan, had in fact requested payment
13. to be stopped on that check?
14. A We then contacted Galax Savings and Loan to find
15. out what the problem was, why the check was stopped
16. and we were told that a new check had been issued,
17. a cashier's check. This was on about November the
18. 6th.
19. Q All right. Did you contact the endorser on the
20. check and the payee?
21. A Yes. I went to the home of Mr. and Mrs. Christian,
22. I believe is their name. Mr. and Mrs. J. E. and
23. Shirley Christian, who lived, at that time, in
24. Hendersonville.
25. Q Were you able to speak with them?
- 26.

1. A I was able to speak with Mrs. Christian and she
2. told me that her husband was out of town in Virginia
3. that he hoped to be back within the next day or so
4. and would take care of the matter. She didn't know
5. what the problem was.

6. Q All right. Did at any time the endorsers, either
7. the Christians personally or National Worm Ranchers
8. as a business entity, pay the bank for this check,
9. as endorsers?

10. A No.

11. Q Has Galax Savings and Loan ever paid your bank as
12. the drawer of the check on their drawer's responsi-
13. bility?

14. A No.

15. Q Do your bank records or files indicate any notice
16. of any kind regarding this until you got the stop
17. payment?

18. A No.

19. Q All right, it's your contention that the Bank of
20. Hendersonville is a holder in due course to this
21. negotiable instrument, is that right?

22. MR. NEFF: If it please the Court, I object to that.

23. That's a question of law.

24. THE COURT: Sustain the objection.

25. Q Mr. Nelson, how long have you worked for your bank?

26. * * *

1. Chisolm or the next day?

2. A It was that or the next day. The day we were noti-
3. fied.

4. Q Now, did you possibly know these people?

5. A No, sir.

6. Q Had Mrs. Chisolm ever been employed by your bank?

7. A I beg your pardon?

8. Q Had the Mrs. Christian ever been employed by your
9. bank?

10. A Not to my knowledge.

11. Q All right, sir. And you made demand on them for
12. Payment?

13. A Yes, sir.

14. Q And were you refused?

15. A Yes, sir. I was not refused and I was not granted.

16. I was told that Mr. Chisolm was in Virginia and
17. would be back in a day or so and would clear up the
18. matter. She didn't know what was going on.

19. Q And that they would clear up the matter. And then
20. on that day, did you write them a letter?

21. A I believe I did, sir.

22. Q Do you have that, sir?

23. A I'll see if I can find it. No, I don't have a copy
24. of it. All I have in here is attorney correspondence.

25. Q All right, sir. And when was the next time you saw
26.

1. your customers? Mr. and Mrs. Christian. Either
2. of them.
3. A We didn't.
4. Q You didn't? All right, sir. You said that you
5. called someone at Galax. Now did you call the First
6. National Bank of Galax or did you call someone at
7. Galax Savings and Loan?
8. A Galax Savings and Loan.
9. Q Do you have a record of that call?
10. A Yes, sir.
11. Q All right, what day was that?
12. A It was either November 6th or the 7th. We called
13. both the Galax Savings and Loan and the First
14. National Bank.
15. Q I believe you testified before in your depositions
16. that it was in January. Is that right?
17. A I don't believe so.
18. Q Who did you speak to at the Galax Savings and Loan?
19. A I spoke with the manager or who reputed to be the
20. ~~manager.~~
21. Q You don't know his name, do you?
22. A I don't have a name.
23. Q And at that time, you received a message that the
24. check had been stopped. Payment had been stopped.
25. A They advised that the check had been stopped and
26.

1. that Galax Savings and Loan advised us that the
2. check was stopped on October 24th and that a cashier's
3. check had been issued on October 24th. The First
4. National Bank, the bookkeeping department advised
5. us that the check had been stopped on October 23rd and
6. a cashier's check issued October 24th.

7. Q All right, sir. Now, thereafterwards, you say did
8. you call Mr. and Mrs. Christian again, of National
9. Worm Ranchers? After that day?

10. A This was all within the same framework, within the
11. same period of time. This was, you know, the phone
12. call was made and the visit to the home was made
13. all within a 24-hour period of time.

14. Q All right. Then after that, you took steps on
15. your own, as your bank, to collect this check, did
16. you not?

17. A We attempted to file suit against the Christians,
18. yes, sir.

19. Q All right, so what date was that please?

20. A It was immediately thereafter. I went and discussed
21. the account with the attorney, with our local coun-
22. sel and at that time we did not know that the
23. people had come back through with the cashier's
24. check and was unable to prove definite fraud, so I
25. couldn't go with a criminal case, had to go with a
26.

* * *

1. Q All right. Now then, the suit where you didn't get
2. service. For what reason?
3. A The people had skipped.
4. Q All right. Did you ever make any further effort to
5. find them?
6. A I did some normal collection skip tracing, yes, sir.
7. Q Do you know of your own knowledge or have you since
8. learned whether National Worm Ranchers were placed
9. in bankruptcy?
10. A I have no knowledge of that.
11. Q Do you know any criminal trials in Tennessee where
12. they were charged?
13. A No, sir.
14. Q All right.
15. A I do not.
16. Q Now, in a prior answer you mentioned that there was
17. a cashier's check received in your bank.
18. A Yes, sir.
19. Q When was that?
20. A When we had the discovery depositions, it was pointed
21. out that Mr. and Mrs. Christian were given a cashier's
22. check to replace the original check and when you
23. showed me the check, it showed that the check had
24. been cashed at the Bank of Hendersonville.
25. Q On what day?
26.

1. A October 26th.
2. Q October 26th?
3. A Yes, sir.
4. Q And that check cleared through normal channels and
5. was paid?
6. A It was a cashier's check.
7. Q My question was it cleared through normal channels
8. and was paid, as far as you know.
9. A My answer is that it's a cashier's check.
10. Q Yeah. A cashier's check is a check that the bank
11. certifies or that is a debt on the bank itself.
12. Is that correct?
13. A Yes, sir.
14. Q Did you check your postings, your out postings, when
15. you placed this cashier's check with your corres-
16. pondent bank that the check that your bank cashed
17. on October the 27th was in the exact same amount
18. as the check that your bank was suing for?
19. A No, sir.
20. Q It is not?
21. A I didn't check.
22. Q All right. In the discovery depositions, it is
23. your recollection though that they were in the
24. exact same amount?
25. A Yes, sir.
- 26.

1. Q Since the discovery depositions have you made any
2. further effort to locate National Worm Ranchers?

3. A No, sir.

4. Q I have no further questions.

5. THE COURT: Questions, Mr. Jolly?

6.
7. CROSS EXAMINATION BY MR. W. F. JOLLY, COUNSEL FOR THE

8. THIRD-PARTY DEFENDANTS:

9. Q Mr. Nelson, the cashier's check that you were asked
10. and questioned about, if the customer wants a
11. cashier's check, which is a check written by the
12. bank itself, and as you have described, is a debt
13. of the bank itself. Before the bank would write
14. a cashier's check, it would debit the customer's
15. account, would it not, sir?

16. A Normally, yes, sir.

17. Q You take the money out of the customer's account
18. and then put it to the account of the bank and then
19. the bank write its check.

20. A It's all done on the same day basis. In other words,
21. the funds are attached so that they will not leave
22. the bank.

23. Q Right. And as opposed to a normal check, when the
24. check is written on a customer's account, the amount
25. of that check is not debited from the customer's
26.

1. account until the check clears. That's correct, is
2. ...it not?

3. A On a check that is deposited, that check, Uniform
4. Commercial Code will bear out that the check is
5. paid at the time the young lady files the check in
6. the customer's pocket.

7. Q As opposed to when the check is written?

8. A Yes, sir.

9. Q As we have demonstrated or illustrated in the case
10. of a cashier's check?

11. A Yes, sir.

12. Q Thank you.

13. THE COURT: Step down please.

14.

15. MR. KANE: Your Honor, is there any reason why
16. we can't substitute a copy for this exhibit?

17. MR. NEFF: I think the best evidence rule would
18. apply in this case, don't you?

19. THE COURT: Well, he's introduced the check before
20. the Court. I would permit the substitution. Call your
21. next witness please.

22. MR. KANE: Could I have just a second, Judge, please
23. with my client.

24. THE COURT: Yes, we'll take a brief recess.

25. (The Court stands in recess.)
26.

1. (The Court reconvenes.)

2. THE COURT: You may proceed.

3. MR. KANE: We have no further evidence on behalf
4. of the Plaintiff, Judge.

5. THE COURT: You gentlemen may proceed then.

6. MR. COOLEY: If the Court please, the defendant,
7. Galax Savings and Loan Association, makes a motion to strike
8. the evidence on the grounds that the Bank of Hendersonville
9. did not exercise due diligence to protect the interests of
10. the drawer of the, the maker of the check and they allowed
11. the National Worm Ranchers, Inc., to draw funds, to draw
12. on these checks on this deposit immediately. Did not
13. wait time for the check to clear. That the National Worm
14. Ranchers were undoubtedly in some sort of had-been, common
15. knowledge, in financial difficulties. For that reason, we
16. move to strike the evidence.

17. THE COURT: The Court overrules the motion.

18.

19. LANNY A. KYLE, first being duly sworn, was examined
20. and testified as follows:

21. DIRECT EXAMINATION BY MR. RALEIGH M. COOLEY, COUNSEL FOR
22. THE DEFENDANT AND THE THIRD-PARTY PLAINTIFF:

23. Q Would you state your name for the record please?

24. A L. A. Kyle.

25. Q Mr. Kyle, where do you live?
26.

1. A Galax.
2. Q What is your position with the Galax Savings and
3. Loan Association?
4. A President.
5. Q And how long have you been president of the Galax
6. Savings and Loan Association?
7. A 10 years.
8. Q Mr. Kyle, did you have any contact with the trans-
9. action here, the, this, the issuing of these checks
10. and the stop payment and so forth.
11. A Well, when it came to my attention, was that, I
12. received a call on October the 21st from the Worm
13. man wanting us to stop payment on a check and
14. issue a new check and I told him that I would re-
15. fuse to have anything to do with that. But I
16. would request Mrs. Higgins to call the Goads and
17. inform them of what was going on. And that's what
18. happened.
19. Q Of course, you had no connection with the issuance
20. of the check, that was all done in the office but
21. it was, I mean, you didn't, you weren't personally
22. involved in that?
23. A No, sir.
24. Q And your first contact was a telephone call on
25. October the 21st?
- 26.

1. A That's right.
2. Q And what did they say had happened with the first
3. check?
4. A It had been lost.
5. Q And they wanted a replacement?
6. A Wanted a duplicate check.
7. Q All right. And you said that you couldn't do it,
8. but you would have the Goads notified. Is that
9. right?
10. A Right.
11. Q O.K. Did you have anything to do with the stop
12. payment order?
13. A No. I did not.
14. Q Were you in on a telephone conversation with Mrs.
15. Goad in regard to it?
16. A No. Mrs. Higgins talked to Mrs. Goad, or Mr. Goad.
17. I believe it was Mr. Goad.
18. Q All right. Well, Mr. Kyle, you got a telephone
19. call from the National Worm Ranchers?
20. A Right.
21. Q One which you've testified to. Is that the only
22. telephone call which you got from them?
23. A That's the only one I got, but Mrs. Goad called
24. requesting a stop payment on October the 23rd.
25. Called our office.
- 26.

1. MR. JOLLY: Was that a call to Mr. Kyle? Mr. Kyle,
2. are you saying that that was a call to you?

3. A No.

4. MR. JOLLY: I object to that.

5. THE COURT: The Court sustains the objection.

6. Q All right. Did you get a telephone call from the
7. Bank in Hendersonville? Or somebody representing the
8. bank down there.

9. A I don't have any notes on it here.

10. Q You did make notes of your telephone conversations?

11. A Yes, sir.

12. Q You don't have any recollection of a telephone call
13. in January from Mr. Nelson?

14. A To me?

15. Q Yes.

16. A I don't have any record of it.

17. THE COURT: I think he asked if you had any recol-
18. lection of it, not a written record.

19. A No, sir.

20. Q All right. That's all the questions.

21.

22. CROSS EXAMINATION BY MR. E. PETER KANE, COUNSEL FOR THE
23. PLAINTIFF:

24. Q Just a few questions, Mr. Kyle. You indicated that
25. you have no recollection of any telephone call
26.

1. from Mr. Nelson, is that right?
2. A The only thing that I would have to go on over a
3. two year period would be my notes and I don't have
4. that in my notes.
5. Q It could have happened. It might not have happened.
6. It's not in your notes.
7. A No, it's not.
8. Q That's what you're saying. O.K. Did you get a
9. call from Worm Ranchers?
10. A October the 21st. That's when I notified Mrs.
11. Higgins to notify the Goads. As a result of that
12. call.
13. Q That's what started things up. Now, did the Goads
14. come to you and ask you to stop payment on the
15. check?
16. A They came, Mrs. Goad came in and requested the
17. stop payment or they came to that agreement and
18. wanted a new check issued.
19. MR. JOLLY: Now, that was not to you, was it, Mr.
20. Kyle?
21. A That was not to me.
22. MR. JOLLY: I object to all of that if he doesn't
23. know.
24. MR. NEFF: I think that this would be in the busi-
25. ness entry rule, interoffice communications, if he had
- 26.

1. knowledge of it.

2. MR. JOLLY: It isn't in the business entry, it is
3. producing.

4. THE COURT: Do you have such business entry, Mr.
5. Kyle?

6. A What's that?

7. THE COURT: Do you have an entry, business entry,
8. in reference to, in the records of the corporation?

9. A I have notes of it and of course, one of the other
10. personnel performed the operation so they can talk
11. about it.

12. Q All right. They're here today so they can talk
13. about it.

14. A They're here.

15. Q All right, now, do you have any evidence of your
16. own knowledge, documentary or otherwise, that indi-
17. cates that the Bank of Hendersonville knew of the
18. perilous financial condition of National Worm
19. Ranchers?

20. A No, sir.

21. Q Do you have any information, documentary or other-
22. wise, of your own knowledge that indicates that
23. the Bank of Hendersonville had knowledge of any
24. insolvency on the part of National Worm Ranchers?

25. A No, sir, I wouldn't have any way to know that.

26.

1. Q Do you know if anybody at Galax Savings and Loan
2. Association has such knowledge?

3. A Well, when we got to talking about the lost check
4. and so forth, I began to wonder about them.

5. Q You began to wonder about them, but you don't know?

6. A I don't know that to be a fact.

7. Q All right. Do you have any documentary or other
8. evidence of your own knowledge that shows that Bank
9. of Hendersonville knew or had knowledge of National
10. Worm Ranchers fraudulent or deceptive practices?

11. A No, sir.

12. Q Do you have any evidence, documentary or otherwise,
13. that indicates that the Bank of Hendersonville
14. did not act in good faith in this transaction?

15. A No, I wouldn't.

16. Q Mr. Kyle, what evidence do you have that indicates
17. that the Bank of Hendersonville did not give full
18. value for the amount sued on in regard to this
19. check that was stopped?

20. A You mean they paid that amount out?

21. Q Yes.

22. A I'd have no knowledge of whether they had or
23. whether they hadn't.

24. Q That's all. Mr. Jolly?

25.

26.

1. CROSS EXAMINATION BY MR. W. H. JOLLY, COUNSEL FOR THE

2. THIRD-PARTY DEFENDANTS:

3. Q Mr. Kyle, you say that when you got this call from
4. Worm Ranchers telling you that the check had been
5. lost, what did you say that you began to wonder
6. about the whole deal, or what was it you said, sir?

7. A Well, in banking circles, you hear about these
8. things and when the call came in and under these
9. circumstances that he went on at a great length to
10. discuss this with me and I told him that we would
11. not be a party to it, that we ...

12. MR. KANE: Excuse me, but who are you referencing
13. this phone call with?

14. Q Worm Ranchers.

15. MR. KANE: Worm Ranchers?

16. A Worm Ranchers.

17. Q That you would not be a party to it?

18. A Right and that we would notify the Goads.

19. Q Then . . .

20. A And I guess that was the first time that they had
21. had any information.

22. Q The Goads?

23. A Right.

24. MR. KANE: Excuse me, Mr. Jolly, when you referred
25. to won't be a party to it, what transaction, is that the
26.

1. replacement of the check or the stopping.

2. A That's right. He was calling me to stop the check,
3. when he should have been calling the Goads.

4. Q But, in other words, at that point in time when you
5. got this call, you became somewhat suspicious about
6. the whole thing, is that a fair statement?

7. A I had, I had a feeling. If I can put it that way,
8. wasn't based on facts, it was just a feeling.

9. Q Right. But you had a feeling of suspicion that
10. something might not be right about it.

11. A I felt that way.

12. Q Yes, sir. That's what I'm saying.

13. A Right.

14. Q You had nothing except your experience in banking
15. and your just innate feeling about it, that some-
16. thing was wrong, is that correct?

17. A That's correct.

18. Q And you told them that you would not be a party
19. to it and you were, I believe the phrase you used
20. when you testified on depositions, and I said that
21. there was no way we would issue a replacement
22. check. Is that the substance of what you told him?

23. A Right. As far as the bank was concerned.

24. Q The bank being Galax Savings and Loan?

25. A Right.

26.

1. Q All right. Do you have or your counsel have the
2. check that was written by Galax Savings and Loan
3. on October 24th. We were to get a copy of that
4. after the depositions. I never have gotten it.
5. I've got the cashier's check but I don't have the
6. check that you all wrote.

7. MR. NEFF: There wasn't any check written.

8. Q Yes, there was. There was a check written by Galax
9. Savings and Loan.

10. MR. NEFF: On October 24th?

11. Q Yes, sir.

12. MR. NEFF: No, sir.

13. Q Do you know anything about the checks, when they
14. were written, what they were and so forth?

15. A There was a check written I suppose to the First
16. National Bank and they took it down there and ...

17. Q Now, Mr. Kyle, if you don't know personally, you
18. didn't handle it, then...

19. A That's right. One of the other people handled it.

20. Q That's fine. Did you instruct Mrs. Higgins to
21. advise the Goads that you thought there was some-
22. thing fishy about this deal?

23. A No, sir. I told her that we had, to advise them
24. that we had a telephone call that the check had
25. been lost.
26.

1. Q And you were not going to issue a replacement check.
2. You were not going to be a party to it.
3. A Right.
4. Q All right. Thank you, sir.
5. MR. COOLEY: All right. You can come down, Mr. Kyle.
6. MR. KANE: Can I ask one more question, Judge,
7. please, excuse me.
8. THE COURT: You may.

9.
10. RE-CROSS EXAMINATION BY MR. E. PETER KANE, COUNSEL FOR THE
11. PLAINTIFF:

12. Q You had a bad feeling about this transaction. Is
13. that what you're saying, Mr. Kyle? Suspicious
14. feeling?
15. A Right.
16. Q Did you ever contact anybody in banking circles
17. about this transaction?
18. A No, sir.
19. MR. NEFF: I believe Mr. Jolly's right, there is
20. a check.
21. THE COURT: Well, Mr. Kyle said there was.
22. MR. JOLLY: Do we, could I inquire of counsel, do
23. you have a copy of that?
24. MR. NEFF: Yes, Mr. Nuckolls has it.
25. MR. JOLLY: Could I see it?
26.

1. MR. NEFF: Yeah.

2. MR. JOLLY: I would like to file this, may it please
3. the Court, as an exhibit.

4. MR. NEFF: We'll introduce it, Mr. Jolly.

5. MR. JOLLY: All right. You're going to introduce
6. it with him?

7. MR. NEFF: Yes, we'll introduce it with Mr. Nuckolls.

8. MR. JOLLY: O.K. I'll withdraw my introduction.

9. THE COURT: Call your next witness please.

10.

11. LOIS HIGGINS, first being duly sworn, was examined
12. and testified as follows:

13. DIRECT EXAMINATION BY MR. L. HARVEY NEFF, JR., COUNSEL FOR
14. THE DEFENDANT AND THIRD-PARTY PLAINTIFF:

15. Q Your name please.

16. A Lois Higgins.

17. Q And are you employed by the Galax Savings and Loan
18. Association?

19. A Yes, sir.

20. Q How long have you so been employed?

21. A 16 years.

22. Q And what is your position?

23. A Office manager.

24. Q Now, then, do you know Mrs., I believe her name is
25. Joyce Goad?
26.

1. A Yes, sir.
2. Q You know her husband, Mr. Robert Goad?
3. A Yes, sir.
4. Q And I believe that it's in evidence there that they
5. had an account numbered 2799-2 with the Savings
6. and Loan Association. Is that correct?
7. A That's right.
8. Q Do you have a recollection seeing Mrs. Goad on the
9. 13th day of October, 1978?
10. A That's when she withdrew the money for worms.
11. Q The first time.
12. A Yes.
13. Q All right, sir. Do you have your original records
14. with you?
15. A No, I don't have any.
16. Q Why didn't you bring them?
17. A I didn't know I was supposed to.
18. Q I hand you, is that a photocopy of a piece of paper
19. that you've got the original in the office?
20. A Yes, sir.
21. Q Will you explain to the Court what that is please?
22. A It's our standard withdrawal slip.
23. Q All right, sir.
24. A And we pay out nothing naturally without the cus-
25. tomer signing that withdrawal slip.
- 26.

1. Q All right, sir, now then, if it please the Court,
2. I ask that this be introduced into evidence please.

3. THE COURT: There being no objections, the Court will
4. receive it.

5. Q Mrs. Higgins, what does that show and how much was
6. withdrawn and what was done in pursuance thereto
7. please?

8. A \$3,995.00 was withdrawn. The check made payable
9. to National Worm Ranchers, Inc. for Robert Goad
10. and Mrs. Goad signed it. It was a joint account.

11. Q And I hand you here Plaintiff's Exhibit #1 and
12. ask you if that was your signature on that check
13. please.

14. A Yes, sir.

15. Q All right, sir. Now then will you turn, and that
16. is the check that you signed and issued to Mrs.
17. Goad on that day for that withdrawal.

18. A Right.

19. Q All right, sir, and she checked, she checked there
20. on this form to make the check payable to National
21. Worm Ranchers, Inc., right?

22. A Yes.

23. Q Now will you turn that over on the back, Plaintiff's
24. Exhibit #1, and does that check show to have been
25. paid by the First National Bank and your account
26.

1. debited for the amount of that check?
2. A It was deposited in the Bank of Hendersonville.
3. Q All right, sir. Now what day does it show to have
4. been paid and a like amount of funds taken from
5. Galax Savings and Loan Association's account by the
6. First National Bank of Galax, Virginia?
7. A From the Savings and Loan account?
8. Q The same day, the 13th.
9. A It couldn't have been, ma'am.
10. Q It wasn't cashed in Tennessee until the 21st. Now,
11. then,
12. A Well, it came off our checkbook that day.
13. Q I understand, but what day, well, then, all right,
14. let me ask you this. This check here . . .
15. THE COURT: On the day of the withdrawal, you took
16. it from the Goad account.
17. A Right.
18. Q All right, now, on this check had never been paid.
19. A Right.
20. Q This check has never been. All right.
21. A Right.
22. Q Now, Mrs. Higgins, were you in the office on a
23. subsequent day when Mr. Kyle gave you a message to
24. call either Mr. Goad or Mrs. Goad?
25. A Yes, sir.
- 26.

1. Q And when was that please, the best that you remember.
2. ber.
3. A The same day that he gave. Because he came directly
4. out and told me.
5. Q He gave you a message at that time to call who
6. and what about please?
7. A To call either Mr. or Mrs. Goad and tell them of
8. the telephone call from the Worm people. I couldn't
9. get in touch with Mrs. Goad, so I called Mr. Goad
10. at work.
11. Q And where is that please?
12. A At Southwestern Training Center.
13. Q And what message did you give the defendant, Mr.
14. Goad?
15. A Exactly what they had told, what the Worm people
16. had told Mr. Kyle.
17. Q And what was that please?
18. A That the check had been lost and they were asking
19. for a new check to be issued and there was no way
20. that the Savings and Loan would do it unless they
21. came and gave their permission that it be done.
22. It was their money.
23. Q It was their money. And what did Mr. Goad, what
24. was his answer to you at that time?
25. A I believe he said to go ahead. Now, this is believe
- 26.

1. that's been a long time ago, that they would want
2. it stopped, but naturally they'd have to come and
3. sign the stop payment.

4. Q All right, sir. Now then, at that time, you all
5. didn't do anything that day?

6. A No, sir.

7. Q Did you have any further dealings with it the next
8. day or the day after?

9. A No. It was turned over mostly to Mr. Nuckolls.

10. Q And were you present in the office on the 24th of
11. October, 1978?

12. A When the next check was issued?

13. Q Yes.

14. A Yes.

15. Q Did you see Mr. Goad in there?

16. A No.

17. Q Did you see Mrs. Goad?

18. A Yes, sir.

19. Q And who was there?

20. A She and supposedly two representatives from the
21. Worms Corporation.

22. Q Did you take any part in that transaction, Mrs.
23. Higgins?

24. A No, sir. I just saw it while I was . . .

25. Q Did you have any conversation with the defendants,
26.

1. either Mrs. Goad who was there?
2. A Nothing unless it was just passing the time of day.
3. Q All right. And that was up to Mr. Nuckolls.
4. A Yes.
5. Q All right, sir. You may examine.
6. A I did, I'm sorry, I did, I did get one phone call
7. I didn't mention.
8. Q All right, sir.
9. A From the Bank of Hendersonville. I don't know the
10. name of the person I talked to. Mr. Kyle was not
11. in the office and they called me anyway because I
12. had signed that first check.
13. Q And when was that please?
14. A As soon as they found out the payment was stopped.
15. Q And what message did you give that gentleman at
16. that time?
17. A He asked us why we stopped it. I told him why we
18. stopped it and he said is it, could this check in
19. any way be construed as a certified check and I
20. said . . .
21. MR. KANE: I'm going to object to this testimony.
22. MR. NEFF: It's proper. He is a representative of
23. the Plaintiff.
24. MR. KANE: Who is he?
25. MR. NEFF: Just what you tell them, the Bank of
- 26.

1. Hendersonville.

2. MR. KANE: She just said that somebody's identified
3. themselves as the, she doesn't know anybody . . .

4. A I think it was him.

5. MR. KANE: But you don't know do you?

6. A Well, I testified to this last time. It's in the
7. record.

8. THE COURT: Are you able to say positively who you
9. talked to, ma'am?

10. A No, sir, because I was more intent on getting
11. across the message they wanted than I was on their
12. name.

13. THE COURT: The objection is sustained.

14. Q All right. You may examine.

15.

16. MR. KANE: Go ahead, Mr. Jolly. I have no questions.

17.

18. CROSS EXAMINATION BY MR. W. H. JOLLY, COUNSEL FOR THE

19. THIRD-PARTY DEFENDANTS:

20. Q Mrs. Higgins, what is your position with Galax
21. Savings and Loan?

22. A Office manager.

23. Q You are the number 2 managerial person in the office,
24. is that not correct?

25. A I guess so.

26.

1. Q And you report to Mr. Kyle.
2. A Right.
3. Q And you're in charge of everybody else in the office?
4. A Supposedly.
5. Q Except of course, him. Supposedly? All right.
6. Now, on this first instance, back in October of '78,
7. the 13th of October, you have, an exhibit has been
8. filed which shows this withdrawal of \$3,995.00 from
9. the Goad account. That's correct, isn't it?
10. A Yes, sir.
11. Q And you handled it?
12. A I handled that. Right.
13. Q All right. Now, I'll show you what purports to be
14. a passbook. You've seen this. The Galax Savings
15. and Loan account in the name of Robert E. or
16. Joyce Goad, joint tenants, right of survivorship.
17. A Right.
18. Q The account apparently was opened July 7, 1975.
19. A That's right.
20. Q And this book shows, does it not, a withdrawal on
21. October the 13th, 1978, of \$3,995.00?
22. A Yes, sir.
23. Q And when this check was written by you as an officer
24. of Galax Savings and Loan, this \$3,995.00 was
25. debited from their account. Is that correct?
- 26.

1. A Yes, sir.
2. Q Now, does this show any further debits on October
3. the 24th or any other date for this \$3,995.00?
4. A No, sir. No, sir.
5. Q There was never any other charge made against that
6. account. Is that correct?
7. A Right.
8. Q For this check?
9. A Right.
10. Q And I believe, if you will recall your deposition,
11. you never, when you talked to Mr. Goad, you never
12. even suggested that any additional charge would
13. be made against his account.
14. A No, sir.
15. Q You said you didn't want to tell anything like
16. that. Is that correct?
17. A That's right.
18. Q We'd like to file this as Goad Exhibit #1 please.
19. THE COURT: All right.
20. Q Now, Mrs. Higgins, after you, after this transaction
21. was completed, the next things you heard about it
22. was when Mr. Kyle told you he had gotten a call
23. from Worm Ranchers.
24. A Yes, sir.
25. Q Right. And asked you to call the Goads?
- 26.

1. A Yes, sir.
2. Q And I believe you said that he told you to tell the
3. Goads exactly what he testified to here?
4. A That's right.
5. Q That the check had been reportedly lost and that
6. the Savings and Loan was not going to issue a re-
7. placement check. It was up to them.
8. A Right.
9. Q Is that correct?
10. A Right.
11. Q Did he tell you to inform the Goads that he was
12. suspicious about this whole transaction?
13. A No.
14. Q Did he tell you that he was suspicious?
15. A No.
16. Q Pardon me?
17. A I don't remember, but I don't think so.
18. Q Well, did you tell the Goads that Mr. Kyle was
19. suspicious?
20. A No, sir.
21. Q And you said, I believe, just a moment ago, that
22. you told Mr. Goad that he or Mrs. Goad would have
23. to come down and sign a stop payment order.
24. A If they wanted it done.
25. Q If they wanted it done?
- 26.

1. A Right. And if I may say one more word?
2. Q Surely.
3. A In the record of the trial before, of the depositions
4. before, it says that I told Mr. Goad what to do,
5. I wouldn't have the audacity to tell anyone as sen-
6. sible as Mr. Goad what to do.
7. Q You told him what you had been instructed to tell
8. him.
9. A Right. And it was up to him whether he, or them,
10. ~~whether they wanted payment stopped on that check~~
11. ~~and another issued or not~~
12. Q Now, Mr. Goad never came down in response to your
13. call, did he?
14. A No, sir. I think he was busy.
15. Q Mrs. Goad came down.
16. A Yes, Mrs. Goad.
17. Q You knew, even though you didn't handle it, you
18. knew she did come down.
19. A That's right. I saw her.
20. Q In point of fact, she never signed any stop pay-
21. ment order, did she?
22. A I didn't go to the bank with her. I don't know.
23. Q You don't know one way or the other?
24. A Mr. Nuckolls will know that.
25. Q Well, you recall testifying that there was no way
- 26.

1. the Goads could stop payment on the check because
2. it was your check. Do you recall that?
3. A I never said that that I remember.
4. Q I call your attention to page 45 of the depositions,
5. lines 11, and this was in response to Mr. Kane's
6. question, "Now if the Savings and Loan writes a
7. check for that amount of money, could the Goads
8. stop payment on that check that was written by the
9. Savings and Loan?" And your answer was, "No, sir,
10. not on our check." Is that not correct?
11. A Yes, I misunderstood your other question.
12. Q The check that was written on October the 13th
13. was the Savings and Loan's check.
14. A Right.
15. Q And the amount of that check was taken from the
16. Goads account at the time it was written?
17. A Right.
18. Q Now, in order to stop payment on that check, it
19. had to be stopped by the maker of the check, did
20. it not?
21. A Yes, sir.
22. Q And it was stopped by the maker, was it not, Mrs.
23. Higgins?
24. A Not until Mrs. Goad came and told us what she
25. wanted to do.
26.

- Q. All right. Now you didn't talk to Mrs. Goad though,
2. you just said.
3. She called on the phone before she came.
4. And she talked to you on the phone?
5. We still did not stop payment until she came.
6. You stopped the payment though. She didn't sign
7. anything that you know of did she?
8. As I say, I didn't go with her.
9. Now, when an account, did you testify as to this
10. call in the deposition?
11A. Yes, sir, I certainly did.
12Q. The second call, I'm talking about.
13A. Yes, sir.
14Q. And what was said, specifically on the second call?
15. Can you recall?
16A. Yes, sir.
17Q. All right, tell us what was said.
18A. The man purportedly from the Bank of Hendersonville
19. asked me if our check was . . .
20Q. No, excuse me, I 'm not talking about that. I was
21. talking about a call from Mrs. Goad. Did you
22. take a call from Mrs. Goad after your first conver-
23. sation with Mr. Goad, before she came in to your
24. office?
25. I think so. And she thought, they knew they
26.

1. wanted payment stopped.
2. Q You think so?
3. A And she would be over.
4. Q You think so or do you know so?
5. A I think so.
6. Q You think so?
7. A Yes. I know one of them told us that they wanted
8. payment stopped, but they would have to come over.
9. Q And you say they would have to come over. Do you
10. know what, if anything, they did whichever one
11. came over?
12. A Well, Mr. Nuckolls will have that information.
13. Q He has all that detailed information. O.K. Now
14. you have confirmed what Mr. Kyle said that the
15. check, that they would not issue a, Galax Savings
16. and Loan would not issue a replacement check. That
17. they wanted no part of it or words to that effect.
18. A We wouldn't issue a replacement check unless the
19. Goads asked us to.
20. Q Well, if the Goads asked you to, if that's what
21. determined whether you issued a check or not, why
22. didn't you tell the Goads you were going to charge
23. it to their account?
24. A Because the first check, payment was stopped, why
25. take it off of their account twice.
- 26.

1. wanted payment stopped.
2. Q You think so?
3. A And she would be over.
4. Q You think so or do you know so?
5. A I think so.
6. Q You think so?
7. A Yes. I know one of them told us that they wanted
8. payment stopped, but they would have to come over.
9. Q And you say they would have to come over. Do you
10. know what, if anything, they did whichever one
11. came over?
12. A Well, Mr. Nuckolls will have that information.
13. Q He has all that detailed information. O.K. Now
14. you have confirmed what Mr. Kyle said that the
15. check, that they would not issue a, Galax Savings
16. and Loan would not issue a replacement check. That
17. they wanted no part of it or words to that effect.
18. A ~~We wouldn't issue a replacement check unless the~~
19. ~~Goads asked us to.~~
20. Q Well, if the Goads asked you to, if that's what
21. determined whether you issued a check or not, why
22. didn't you tell the Goads you were going to charge
23. it to their account?
24. A Because the first check, payment was stopped, why
25. take it off of their account twice.
- 26.

1. Q That's exactly right. Why take it off their account
2. twice?
3. A And we didn't.
4. Q Right. Well, isn't that inconsistent with their
5. making the decision. If you're not going to take
6. it off their account?
7. MR. NEFF: If it please the Court, that's a point
8. of law.
9. Q All right. I'll withdraw the question. You were
10. how long have you been with the Galax Savings and
11. Loan, Mrs. Higgins?
12. A 16 years.
13. Q And you were in banking 5 years before that, were
14. you not?
15. A Yes, sir.
16. Q And you are familiar with the normal check writing
17. and clearing procedures are you not?
18. A Yes, sir.
19. Q And when you stop payment, it is, if the customer
20. writes a checks, this is a commercial bank now I'm
21. talking about, not a savings and loan, writes a
22. check to pay a bill we'll say and notifies the bank
23. to stop payment, payment is stopped before the
24. check clears, that's the normal procedure?
25. A That's right.
- 26.

1. Q Before the customer's account is debited for the
2. amount of the check. If it's been debited, then
3. you can't stop payment on it, right?

4. A Right. But if you want to keep your job, you better
5. not pay it, when it comes in.

6. Q I think that's all, thank you, Mrs. Higgins.
7.

8. CROSS EXAMINATION BY MR. E. PETER KANE, COUNSEL FOR THE
9. PLAINTIFF:

10. Q Just one question please. In this case, the drawer
11. of the check was Galax Savings and Loan, is that
12. right?

13. A Yes, sir.

14. Q The payor bank was the First National Bank, of
15. Galax.

16. A Right.

17. Q And it is to the First National Bank of Galax that
18. the stop payment order is issued.

19. A Yes.

20. Q Since they are the payor bank.

21. A Yes.

22. Q You wouldn't issue stop payment order to depository
23. banks, would you?

24. A No.

25. Q No way of knowing who they'd be.
26.

1. A Right. That's why, how could we let the Bank of
2. Hendersonville know anything when we didn't know
3. where that check was going to be deposited.

4. Q Thank you.

5.

6. RE-DIRECT EXAMINATION BY MR. L. HARVEY NEFF, JR., COUNSEL

7. FOR THE DEFENDANT AND THE THIRD-PARTY PLAINTIFF:

8. Q Mrs. Higgins, I believe you are the office manager.

9. Let me ask you this. National Worm Ranchers, Inc.,
10. do they now or have they ever had an account with
11. Galax Savings and Loan Association?

12. A No, sir.

13. Q They were never a customer of your Galax Savings
14. and Loan Association?

15. A No, sir.

16. Q And Mr. and Mrs. Goad were customers?

17. A Right.

18. Q And at the time this, the amount that was taken
19. off their account, pursuant to that withdrawal on
20. the 13th of October, 1978, was the amount that was
21. shown by that paper?

22. A Right.

23. Q It was that account.

24. A Right.

25. Q And that money was taken off their account, added
26.

1. to the Galax Savings and Loan bank account, the
2. general account, to cover this other check.
3. A Not added to, taken off.
4. THE COURT: Run that by one more time.
5. Q All right, sir. All right. When you take money
6. off of this book . . .
7. A Right.
8. Q Then you put the same amount of money . . .
9. A It's already down there.
10. Q It's already down there. So you take that money
11. and issue a check for it.
12. A Right and that comes off our balance.
13. Q And that doesn't come off the balance until that
14. check is cashed.
15. A It does on our books. We don't use the money any
16. more.
17. Q You don't use the money any more.
18. A Right.
19. Q So the money that's gone out, the \$3,995.00, from
20. that date, this date, other than it was never used,
21. till the second check was issued.
22. A No, sir.
23. Q And Galax Savings and Loan Association does not
24. have any of the money, or would not have taken any
25. of the money, unless Mr. and Mrs. Goad told you to,
26.

1. would you?

2. A That's right.

3. Q I have no further questions.

4. THE COURT: Any further questions, gentlemen?

5. MR. KANE: No, Your Honor.

6. THE COURT: Step down, Mrs. Higgins.

7.

8. BENJAMIN F. NUCKOLLS, first being duly sworn, was

9. examined and testified as follows:

10. DIRECT EXAMINATION BY MR. L. HARVEY NEFF, JR., COUNSEL FOR

11. THE DEFENDANT AND THE THIRD-PARTY PLAINTIFF:

12. Q Mr. Nuckolls, you are an employee of the Galax

13. Savings and Loan Association?

14. A Yes.

15. Q All right, sir, and were you in the Savings and

16. Loan Association on the, I believe, it was the 13th

17. of October, when this check, the first check, to

18. National, the check was issued to National Worm

19. Ranchers?

20. A I imagine I was.

21. Q Were you familiar with that in any way?

22. A Uh

23. Q That's the matters that took place on the 13th of

24. October.

25. A Not on that particular day that I recall.

26.

1. Q All right. Then when is, what was your first con-
2. tact with the National Worm Ranchers and the issu-
3. ance of a second or subsequent transaction in this
4. matter.

5. A Well, I overheard a telephone conversation, about
6. a telephone conversation that the check had been
7. lost that had been issued to the National Worm
8. Ranchers.

9. Q That was a conversation between Mr. Kyle and Mrs.
10. Higgins? Is that correct?

11. A I believe the first call was between Mrs. Higgins
12. and the Worm Association.

13. Q All right, sir. Now, then, what first instruction
14. did you have about it and from whom and why, please?

15. A Mrs. Higgins advised me that a second check would
16. have to be issued to the National Worm Association
17. and she called the bank to stop payment.

18. Q All right, at that time, when she called the bank
19. to stop payment, on what date was this?

20. A October the 23rd, that she verbally called the
21. bank and told them to stop payment and then I had
22. to go down on the 24th before the second check was
23. issued to sign the stop payment order on the first
24. check.

25. Q Now, at the time, you went down to sign the stop
26.

1. payment order, on what authority did you have and
2. from whom to sign the stop payment and why?
3. A I was acting under Mrs. Higgins' instructions.
4. Q Well, what were your instructions?
5. A Sir?
6. Q What were your instructions?
7. A To sign the stop payment order.
8. Q All right, sir. Did you do that?
9. A Yes, I did.
10. Q Now, at that time, was, had Mrs. Goad come into
11. the office or Mr. Goad?
12. A When I signed the stop payment order, no one had
13. come.
14. Q No one had come in?
15. A At that particular time on October the 24th.
16. Q All right, sir, no one had come in but you proceeded
17. to go down and sign a stop payment order. Do you
18. have a copy of that with you, sir?
19. A No, sir.
20. MR. JOLLY: We've got a copy here if you want to
21. file it.
22. Q See if that isn't the copy.
23. A I brought the . . .
24. Q Read that and see if your name is on that piece of
25. paper.
26.

1. A Yes, it is.
2. Q All right, sir. What is that please?
3. A Please refuse to pay check number 230255, amount
4. \$3,995.00, payable to National Worm Growers, dated
5. October 13, 1978. Galax Savings and Loan, signed
6. by me, received by Down, dated received October 23,
7. time 9:45, how received, phone.
8. Q All right, sir. Now that is the, I ask this be
9. introduced in evidence.
10. MR. JOLLY: No objection.
11. MR. KANE: No objection.
12. THE COURT: Let it be received.
13. Q Now, on this 23rd day of October, 1978, was a
14. replacement check issued for that stop payment order
15. Mr. Nuckolls?
16. A No, sir.
17. Q What day and when was a replacement check issued?
18. A October the 24th, 1978.
19. Q All right, sir, and what time of the day is this?
20. What's your recollection of it please?
21. A It was the early part of the morning.
22. Q All right now, who was in the office at, about that
23. transaction?
24. A The National Worm Ranchers Association representa-
25. tives were there first and then Mrs. Goad came a
- 26.

1. short time later.
2. Q They were there first. Did you or anybody at the
3. Savings and Loan Association do anything until Mrs.
4. Goad came?
5. A No, sir.
6. Q O.K. What did you do and why did you do it?
7. A I, when Mrs. Goad came in and identified these
8. people that were there as being the representatives
9. that she had dealt with, I then proceeded to write
10. the replacement check for her and gave it to her.
11. Q All right, do you have a copy of that replacement
12. check with you?
13. A Yes, I do.
14. Q All right, sir. I ask that this be introduced into
15. evidence please.
16. THE COURT: Without objections, it will be received.
17. Q You have a notation in the corner of that check,
18. Mr. Nuckolls. What is that please and why did you
19. make that notation?
20. A For Robert Goad and the reason for the notation is
21. to verify who the check was for.
22. Q All right, sir, and then did, did you, you gave
23. this check, is this the check that you gave to Mrs.
24. Goad?
25. A Yes, it is.
- 26.

1. Q You gave that physically to her?
2. A Yes, sir.
3. Q All right, sir. What did she do with it then?
4. A She handed it to the National Worm Ranchers Association representative.
- 5.
6. Q She physically, that was in the office, she gave that check to the National Worm Ranchers Association man?
- 7.
- 8.
9. A Yes.
10. Q What next took place?
11. A Than the representatives were wanting an cashier's check, which we do not issue at the Association and I was asked to go to the bank with him to verify that we issued the check and so he could get a cashier's check for it.
- 12.
- 13.
- 14.
- 15.
16. Q Did Mrs. Goad go with you?
17. A No, I don't believe she did.
18. Q Now does this \$3,995.00 represent the initial withdrawal made by Mrs. Goad on the 13th of October, 1978?
- 19.
- 20.
21. A Yes, it does.
22. Q And I believe thereafter, you did see, when you went with the man to the bank, they did give him a, First National Bank did give him a cashier's check?
- 23.
- 24.
- 25.
- 26.

1. A Yes.

2. Q And thereafterward, that amount for this check there
3. that I just gave to you with the identification for
4. Robert Goad, that amount was debited and taken off
5. the Galax Savings and Loan Association's account
6. at the First National Bank?

7. A It would have been taken off our account at the
8. First National, yes.

9. Q All right. I mean, the check shows that it has
10. been paid, doesn't it?

11. A Yes. It would have been a debit at our account
12. at the First National Bank.

13. Q Did you ever had any discussion with Mr. Goad?

14. A No, sir.

15. Q You may examine.

16.

17. CROSS EXAMINATION BY MR. W. H. JOLLY, COUNSEL FOR THE

18. THIRD-PARTY DEFENDANTS:

19. Q Mr. Nuckolls, did you have any telephone conversa-
20. tions with Mr. Goad?

21. A No, sir.

22. Q How about Mrs. Goad?

23. A No.

24. Q All right, sir. So the first time you actively
25. participated in this transaction was when you were
26.

1. instructed by Mrs. Higgins to go to the First .
2. National Bank and sign that stop payment order.
3. A Yes.
4. Q And then the next day, Mrs. Goad and the two Worm
5. Rancher people got there. You then wrote the check
6. that's been filed here, dated the 24th to National
7. Worm Ranchers.
8. A Yes.
9. Q For this \$3,995.00 and you signed it as an officer
10. or an authorized signature of the Association.
11. A Yes, sir.
12. Q Now, you took that check and you handed it to Mrs.
13. Goad. Right?
14. A Yes.
15. Q And she handed it to the Worm Ranch people?
16. A Yes.
17. Q All right. Now, you said, you were asked to have
18. it certified. Did the Worm Ranch people ask you
19. to certify it?
20. A I really don't recall how they went about asking
21. for a cashier's check. Whether they asked Mrs.
22. Goad or if they could get a cashier's check for it
23. or how we agreed to get one, but there certainly
24. would have been no problem.
25. Q Apparently there wasn't any problem at all, was
26.

1. there?
2. A No.
3. Q You took the check, you took the man or the men.
4. A I went along with them.
5. Q You went to the bank.
6. A Yes.
7. Q And you gave the check to the bank?
8. A No, sir, he gave the, I represented him to the teller
9. at the First National that we had just issued this
10. check and he wanted a cashier's check for it.
11. Q You told the people at the bank that it was all
12. right to go ahead and issue a cashier's check.
13. This was a bona fide check of the Association.
14. A Well, I didn't tell them that it was all right.
15. I told the teller that he wanted a cashier's
16. check for it. They have their own procedure about
17. issuing a cashier's checks. I just really stated
18. what he wanted to accomplish.
19. Q Well, the teller knew who you were, didn't she?
20. A Yes.
21. Q And did you have to sign anything to get the
22. cashier's check issued?
23. A No.
24. Q They just went ahead and issued it. They took the
25. check you had just written and substituted for that
- 26.

1. a cashier's check.
2. A yes.
3. Q Now, a cashier's check, when they issued a cashier's
4. check, then the amount of that check, your account
5. was flagged or debited right then, was it not?
6. A Well, it would have been reduced as soon as the
7. paperwork reached their accounting department.
8. Q That day?
9. A Yes.
10. Q Not when the check cleared?
11. A That's correct.
12. Q That's correct. If it hadn't been a cashier's
13. check, then it wouldn't have been, your account
14. wouldn't have been debited until the check cleared.
15. Right?
16. A I believe that's correct.
17. Q Well, you know that correct, don't you, Mr.
18. Nuckolls?
19. A State that again. I really don't . . .
20. Q If it had not been a cashier's or certified check
21. your, the Association's account would not have been
22. debited until the check cleared.
23. A Yes.
24. Q Whereas if it was, which it was in this case, then
25. it would have been debited as soon that day, that
- 26.

1. business day, as soon as it got to the accounting
2. department. Right?
3. A Yes.
4. Q Right. Did you know Mr. Kyle was suspicious? Did
5. you discuss this with Mr. Kyle? This whole trans-
6. action?
7. A At what time?
8. Q Any time. Prior to the suit being brought.
9. A Prior to the suit being brought?
10. Q Yes, sir.
11. A Uh . . .
12. Q I'm not asking you what you said, I'm just asking
13. you if you discussed it with him.
14. A Well, there was some discussion that the suit was
15. being brought.
16. Q No, I'm talking about right after this happened,
17. on the 24th.
18. A No. There was no suspicion that I know of.
19. Q You didn't know anything about his feeling of sus-
20. picion in this case?
21. A No, But it's
22. Q I just ask you if you knew about it.
23. A No.
24. Q Were you instructed by Mrs. Higgins then, I take
25. it you were not, to advise Mr. or Mrs. Goad that
26.

1. there was some suspicious circumstances?

2. A No.

3. Q So Mrs. Goad's participation on the 24th consisted
4. of coming there and saying these are the Worm
5. Ranch people. You handed her the check, she handed
6. it to them?

7. A Yes.

8. Q And that's it?

9. A Yes.

10. Q And this, the Goads' account was not debited any
11. time after the day that the original check was
12. written.

13. A That's correct.

14. Q For this transaction, I'm talking about.

15. A That's correct.

16. Q And Mrs. Goad signed nothing at your office or at
17. the bank, she didn't even go to the bank, did she?

18. A No.

19. Q That morning she signed nothing.

20. A That's correct.

21. Q Because it wasn't her check to stop payment on,
22. is that correct?

23. A Yes.

24. Q All right. Thank you.

25.

26.

1. RE-DIRECT EXAMINATION BY MR. L. HARVEY NEFF, JR., COUNSEL
2. FOR THE DEFENDANTS AND THE THIRD-PARTY PLAINTIFFS:

3. Q It was her money though, wasn't it?

4. MR. JOLLY: I object to that. That is the question
5. for the Court. It wasn't her money.

6. Q Mr. Nuckolls, when Mrs. Goad came in, what, did
7. she ask you to do something?

8. A She asked me to issue the replacement check.

9. Q Thank you.

10.

11. CROSS EXAMINATION BY MR. E. PETER KANE, COUNSEL FOR THE
12. PLAINTIFF:

13. Q Mr. Nuckolls, when you made the stop payment re-
14. quest of the bank, did you have to post an identity
15. bond?

16. A No.

17.

18. RE-CROSS EXAMINATION BY MR. W. H. JOLLY, COUNSEL FOR THE
19. THIRD-PARTY DEFENDANTS:

20. Q Could I ask one more question? Mr. Nuckolls, did
21. you or anybody at the Association in your presence
22. advise Mrs. Goad anything about the ramifications
23. of stopping payment on a check or the fact that
24. their account might be charged back with the \$3,995.00
25. again?
26.

1. A No.

2. Q You, no explanation nor advice was given to her at
3. all.

4. A No.

5. Q Thank you, sir.

6.

7. RE-DIRECT EXAMINATION BY MR. L. HARVEY NEFF, COUNSEL FOR
8. THE DEFENDANT AND THE THIRD-PARTY PLAINTIFF:

9. Q You done what she asked you to, is that correct?

10. A Yes.

11. Q Thank you.

12. THE COURT: Step down, sir.

13.

14. JOYCE GOAD, first being duly sworn, was examined
15. and testified as follows:

16. DIRECT EXAMINATION BY MR. RALEIGH M. COOLEY, COUNSEL FOR
17. THE DEFENDANT AND THE THIRD-PARTY PLAINTIFF:

18. Q Your name is Joyce Richardson Goad, is that right?

19. A That's right.

20. Q And of course, you are one of the parties to this
21. suit?

22. A Yes.

23. Q Mrs. Goad, I, I'm going to try to go from where
24. you first came in and try to take everything in
25. order so that we can develop exactly what happened.

26.

1. In the first place, you and your husband had some
2. sort of contract or obligation with National Worm
3. Ranchers, Inc. Did you buy something from them?
4. You had a debt. You owed them some money. Is that
5. right?
6. A Yes.
7. Q All right. You, what was this money owed for?
8. A For worm and worm bins.
9. Q B-I-N-S? Bins.
10. A Yes. B-I-N-S.
11. Q All right. So you all, you all were indebted to
12. the National Worm Ranchers. Now, and you were
13. going to pay this debt?
14. A Yes.
15. Q All right. How did you go about that?
16. A We took the money out of our savings at the Galax
17. Savings and Loan.
18. Q All right. Let's go, you went down to the Savings
19. and Loan yourself?
20. A Yes, I had to go down to get it.
21. Q All right. You went down to the Savings and Loan
22. yourself?
23. A Yes.
24. Q Who else went with you?
25. A No one.
- 26.

1. Q You went by yourself?
2. A Yes.
3. Q Now, do you remember what date this was?
4. A October 13th. I think that's when the check was
5. written.
6. Q All right. Now, exactly what did you do in the
7. Savings and Loan on this occasion?
8. A I went in and withdrew the amount of money I needed
9. and I signed a withdrawal slip.
10. Q All right. You signed a withdrawal slip. Did you
11. get a check?
12. A Yes.
13. Q All right. How much was this check?
14. A \$3,995.00, I think. It's obscene, the amount, but
15. yes.
16. Q All right. That, this was your original check.
17. Now, was this check made out to you or to your
18. husband?
19. A No.
20. Q Who was it made out to?
21. A To the Worm Ranchers.
22. Q And why was it made out to the Worm Ranchers?
23. A Because that's who the money was owed to. That's
24. who the money was owed to.
25. Q All right. And did you ask the Savings and Loan
- 26.

1. to issue a check to the Worm Ranchers?
2. A Yes.
3. Q So you told them that you wanted a check and instead
4. of issuing the check to you and your husband, you
5. wanted it issued to the National Worm Ranchers?
6. Is that right?
7. A Yes.
8. Q O.K. That's the reason the check was issued this
9. way. Rather than say, being issued to you, or your
10. husband.
11. A Yes.
12. Q Now, you left the bank and at this point nothing is
13. said and you don't know of any problem or anything.
14. Is that right.
15. A Yes.
16. Q What did you do with the check?
17. A I took it home and gave it to my husband.
18. Q Did you see it after that?
19. A No.
20. Q Did you know of your own knowledge what he did
21. with the check?
22. A Yes, I do.
23. Q What did he do with the check?
24. A Well, we had the men that came from Worm Ranchers
25. that evening. They installed the bins and the worms
- 26.

1. and my husband gave them the check.
2. Q All right. You saw him deliver the check?
3. A No, I did not see it. But I saw them coming. I
4. was away from home. But I did not see my husband
5. give them the check, directly.
6. Q All right. And up to this point, there is to your
7. knowledge at least, there is no problem.
8. A No problem that I know of.
9. Q Now, when did you next hear or anything about the
10. check or about the employment with National Worm
11. or anybody else?
12. A My husband came home at dinner one night and said
13. that they had stopped, that the check had been
14. lost. The check had been lost, yes.
15. Q The check had been lost. And what did you all
16. decide to do about that?
17. MR. JOLLY: Now, I object to the form of the
18. ^{not}question. He has/proved it
19. THE COURT: The Court sustains the objection.
20. Q All right. Now, Mrs. Goad, you've got the informa-
21. tion now that the check had been lost. Did you
22. have any question about the check being lost?
23. A Well, yes. I mean, I wondered how it had been lost,
24. but that's all.
25. Q All right. Did you have any telephone conversation
- 26.

1. with anybody at the Savings and Loan with regard to
2. it?
3. A No, I didn't.
4. Q You didn't yourself?
5. A No.
6. Q All right. You went back down to the. O.K. Did
7. you all, did you or your husband talk to anybody
8. from the Worm Ranchers about this check?
9. A I certainly didn't. And I don't think my husband
10. did either, no. I don't believe. I can't really
11. answer for him about that. But I don't think that
12. he did.
13. Q Well, I'm asking you what you know.
14. A No, I did not have any conversation with them at
15. all.
16. Q All right. Now, for some reason, you went down to,
17. I'm going to ask you, let me phrase the question
18. like this. On October the 24th, you went back
19. down to the Savings and Loan Association.
20. A Yes, sir.
21. Q And who did you have with you?
22. A I didn't have anyone with me, when I went in.
23. Q What?
24. A I didn't have anyone with me when I went into the
25. Galax Savings and Loan that morning.
26.

1. Q All right. Well, now, why did you go down there?
2. A I went down there because I was to meet two repre-
3. sentatives from the Worm business and the bank was
4. going to issue them a check to replace the one that
5. had been lost.
6. Q All right. Well, now, when, all right, you were
7. to meet two people from the, from the Worm Ranchers
8. company or corporation or whatever it was.
9. A Yes.
10. Q When, when was that plan or when was that arrange-
11. ment made that you would meet? How did you communi-
12. cate with somebody to know that you were going down
13. there to meet these people?
14. A My husband made the plans.
15. Q He, he made the arrangements?
16. A Yes, there would be two representatives there.
17. Q And you understood that the purpose of this meeting
18. was for the, for the issuance of a replacement
19. check for the one that had been lost.
20. A To replace the check for the one who had been lost.
21. Q All right. Now, you went down to the, to the Savings
22. and Loan yourself?
23. A Yes.
24. Q And who all was there?
25. A The two representatives, the two young men from the
- 26.

1. Worm Ranchers, Inc., and the bank officials and
2. myself.
3. Q All right. Did you, did you talk to Mr. Nuckolls
4. when you were down there? Was he the one that
5. you were doing, the activities were taken place with?
6. A Yes, Mr. Nuckolls.
7. Q All right. Did you tell Mr. Nuckolls what your
8. purpose was in being there?
9. A No, he knew what my, he knew why I was there. They
10. had asked us, because, see, the bank had requested
11. that I come in and do this.
12. Q All right. And what were you doing?
13. A I was in there to pick up the second check to
14. replace the one that had been lost.
15. Q All right. Now, did anybody say anything or any
16. discussion about the first check?
17. A No, not to my recollection, we didn't have any
18. discussion about the first check at all.
19. Q Did you give Mr. Nuckolls any instructions about
20. what he was supposed to do?
21. A No, I didn't.
22. Q You think he had been previously instructed?
23. A I don't know that he had been instructed. Evidently,
24. I'm not sure about that, Mr. Cooley, I don't,
25. instructed by whom? Could you . . .
26.

1. Q Somebody, somebody must have told him somewhere
2. that you all were going to replace the first check.
3. A Uh, I don't know . . .
4. MR. JOLLY: Who is you all?
5. A I'm sorry, I don't understand your . . .
6. Q All right. You, Mrs. Goad, you've testified and
7. I want to make sure, you've testified that your
8. purpose in going down to the Savings and Loan was
9. to replace this first check. Now that's what you've
10. testified. Now, somebody gave you instructions
11. to go down there to see about replacing this check
12. and somebody must have said something to the bank
13. officials about replacing this check. Is that right?
14. A Well, that ties in with the call from Mrs. Higgins
15. to my husband at the Training Center that the
16. check had been lost and that they would issue another
17. check, but one of us should be there before it was
18. issued.
19. Q All right. Why, why were you there then because
20. on this new issue?
21. A Because my husband was busy and he couldn't go and
22. I was running the errand for him, so to speak.
23. Q You were doing his duties? All right. Did you,
24. did anybody say anything to you about stopping pay-
25. ment on this first check?
26.

1. A No. Except my husband relayed the message to me
2. that had been given to him by the Galax Savings and
3. Loan.
4. Q All right. What was this message?
5. A That the first check had been lost and a new one
6. would have to be issued.
7. Q And nobody said anything to you that, that the
8. payment would have to be stopped on the first check?
9. A No. Not from the bank. Is that what you're saying?
10. Q Yes.
11. A From the bank, no. No, not to me, directly.
12. Q And nothing was said and you didn't, all right.
13. Well, I'll put it now this way then, Mrs. Goad,
14. when you got down there, they gave you the check,
15. the bank did, the Savings and Loan, they wrote
16. a check to the National Worm, wrote another check
17. and gave you the check?
18. A I don't recall them, you mean actually handing the
19. check to me?
20. Q Yes.
21. A No, I don't think they handed it to me. No.
22. Q Who did they hand it to?
23. A Well, they wanted a cashier's check. And Mr.
24. Nuckolls went to the bank with them to get the
25. cashier's check and they came back. I waited. I
26.

1. didn't go with them. And they came back to the
2. bank and I, you know, actually, I'm not sure who
3. actually handed it to the representatives.
4. Q You didn't take the check and then hand it over to
5. the people from the Worm Ranchers?
6. A Yes. It was, you know, they received the check and
7. I'm not sure who, in other words, you're saying
8. did Mr. Nuckolls hand me the check and then I, in
9. turn, handed it to the representatives. Is that
10. what you're saying?
11. Q Yes.
12. A I beg your pardon?
13. Q Yes.
14. A I'm not real sure about that, Mr. Cooley. I don't
15. believe that I handed the check to them. I think
16. that it was just, Mr. Nuckolls had, did all the
17. business transaction of it, I just stood there.
18. Q Well, Mrs. Goad, you approved the issuance of a
19. replacement check for the first check?
20. A Well, yes, by my being there. We thought it was
21. a satisfactory thing to do, from what, you know,
22. we were going along with the Savings and Loan
23. Company. We thought that was the, we knew very
24. little about banking. We thought this was just a
25. replacement because the first check had been lost.
26.

1. Q That's all.

2.

3. MR. KANE: I have no questions at this time.

4.

5. CROSS EXAMINATION BY MR. W. H. JOLLY, COUNSEL FOR THE

6. THIRD-PARTY DEFENDANTS:

7. Q Mrs. Goad, just a couple of questions. Do you know
8. anything about stop payment orders or what legal
9. significance, if any, they have?

10. A Never. This is the first experience. I knew
11. nothing about them.

12. Q Have you all, to your knowledge, have you and your
13. husband, have you all ever stopped payment on one
14. of your own checks?

15. A No, we've never had to do anything like that.

16. Q Was any explanation made you by anybody at the
17. Galax Savings and Loan about . . .

18. A None. None whatsoever.

19. Q And you were asked if you approved it, did, what
20. did you think about that. What do you mean, did
21. you approve it?

22. MR. NEFF: If it please the Court, I think that's
23. improper in view of her other answer.

24. THE COURT: He may ask her what she thought she
25. was approving.

26.

1. MR. NEFF: That's speculative.
2. Q What do you mean you asked if you approved issuance
3. of the other check?
4. A I don't think it was a sense of approving, no. I
5. didn't know that I had to approve it. The bank,
6. you know, it was just a cut and dried thing. In
7. my, to my knowledge. I mean, my understanding, that
8. the check was lost, we'll issue a new check.
9. Q Did you, were you told by anybody at the Savings
10. and Loan that there was any possibility that your
11. account would be charged with this check?
12. A None whatsoever. Nor did my husband. None whatso-
13. ever.
14. Q And you didn't sign anything that morning?
15. A I didn't sign anything at all. The only thing . . .
16. Q At any time after the 13th, did you call the Savings
17. and Loan and tell anybody there to stop payment on
18. any check?
19. A No.
20. Q You made no call whatsoever to the Savings and Loan?
21. A No. None at all.
22. Q To Mrs. Higgins?
23. A No.
24. Q Or Mr. Kyle? Or Mr. Nuckolls?
25. A No.
- 26.

1. Q Or anybody else?

2. A No.

3. Q All right. Thank you, ma'am.

4.

5. RE-DIRECT EXAMINATION BY MR. L. HARVEY NEFF, JR., COUNSEL

6. FOR THE DEFENDANT AND THE THIRD-PARTY PLAINTIFF:

7. Q Let me ask her just one more question. How did
8. you know what time to be there then?

9. A You mean to meet the representatives at the bank?

10. Q Yes, Ma'am.

11. A I'm not real sure, Mr. Neff. I don't know. I
12. was given a time but I don't know how I got, I
13. just don't remember. Unless it was done through
14. the bank or . . .

15. Q Well, you didn't, you just answered you didn't talk
16. to them.

17. MR. JOLLY: No, no, I object. She did not. I
18. asked her if she called, the Savings and Loan.

19. THE COURT: His question was if she called the
20. Savings and Loan.

21. Q All right. You didn't call. Did they call you?
22. Put it another way.

23. A I'm not sure. They didn't call me about the time,
24. no.

25. Q All right.
26.

1. A Unless they told my husband and he relayed the
2. message to me. I do know when I got there that
3. the representatives had called the bank and said
4. we're going to be late and I had to wait 30-35
5. minutes on them. So they didn't call, contact me
6. in any way, they called the bank and told them.

7. Q You think your husband is the one that told you
8. the time?

9. A I can't definitely say.

10. Q Or did you, did you yourself have any recollection
11. of talking to any of the National Worm Ranchers
12. people?

13. A Oh, no. Never.

14. Q You didn't discuss that?

15. A No.

16. Q All right.

17. THE COURT: Do you have any questions, Mr. Kane?

18. MR. KANE: No, I do not, Your Honor.

19. THE COURT: Step down please, ma'am.

20.

21. MR. COOLEY: If the Court please, that will conclude
22. ours with the saving point of Mr. Robert Earl Goad, which
23. we all had agreed on prior to this trial.

24. MR. KANE: Do you intend to call him as your wit-
25. ness?

26.

1. MR. COOLEY: Yes, sir, I think we will.

2. THE COURT: I don't believe you were present, Mr.
3. Kane, when the matter was brought before the Court last or
4. this week, I believe. It was agreed that at the convenience
5. of counsel, Mr. Goad might be called as a witness and his
6. evidence would be considered by the Court.

7. MR. KANE: Yes, sir, I was aware of that. My
8. question is, is Mr. Goad's evidence going to have anything
9. to do with any material issue that rises between the Bank
10. of Hendersonville and with your client.

11. MR. COOLEY: I don't really think so. What you're
12. saying is . . .

13. MR. KANE: I'm going to make my motion now as to
14. the Plaintiff's case against your defendant because I don't
15. think Mr. Goad's evidence has one iota of materiality as
16. to the complaint between the Bank of Hendersonville and
17. Galax Savings and Loan. He has to do with the third-party
18. suit. I think that's fair to say, isn't it?

19. MR. COOLEY: We agree to that.

20. MR. NEPP: Mr. Kane, I would hate to impose upon
21. Mr. Nelson to come back or impose upon you to come back,
22. but as Mr. Stuart Campbell, Sr., one time told me, he says
23. you never know what the answers may be till the witness
24. testifies. So, and I don't think we can say further at
25. this stage of the proceeding, I would say fairly to the
26.

1. Court and to you and to Mr. Nelson, that if there is any
2. way that we can avoid the two of you all coming back, we
3. will do so, because I can see your position.

4. MR. KANE: I guess what you're saying is that you
5. don't know what Mr. Goad's going to say, in spite of taking
6. his deposition.

7. MR. NEFF: That was going around the long way, yes.

8. MR. JOLLY: I take it also that you, at this point,
9. would not agree to, for the Court to consider his deposition.
10. in lieu of having him back here. That that position hasn't
11. changed?

12. MR. NEFF: Pete, not without re-reading that. I
13. read it again yesterday. There's some difference of, what
14. I remember reading yesterday and there's one or two things
15. that sort of unclear to me in accordance with the testimony
16. today.

17. THE COURT: I believe that's a no, Mr. Jolly.

18. MR. JOLLY: I guess that's what it is, Judge. Well,
19. for the record, we'd like to make a motion to strike the
20. third-party plaintiff's claim against the third-party
21. defendant and enter summary judgment in favor of the third-
22. party defendant regardless of what Mr. Goad may or may not
23. testify to, but as a matter of law. The Goad's account
24. was debited and they, at the time, this original check
25. was written and they had no legal authority, right, power
26.

1. or anything else to stop payment, authorize anything. Their
2. money was taken out of their account and put into the Savings
3. and Loan's account and everything from that point on was
4. done by the Savings and Loan. They never signed anything.
5. They couldn't have signed anything to have gotten any
6. money out of any account other than their own, which was
7. not involved. And as I say, we . . .

8. THE COURT: Oh, I might save you time, Mr. Jolly.
9. The Court will make no judgment in this case until the
10. evidence has been concluded.

11. MR. JOLLY: I understand that answer better than
12. the other.

13. MR. KANE: Can we decide now when this testimony
14. or tender will be? I'd like to get this thing concluded.

15. THE COURT: It's to be done at my office before
16. this lady here. She's going to record it. I don't even
17. have to be present.

18. MR. JOLLY: All right.

19. MR. COOLEY: Well, when is Mr. Goad going to be
20. available?

21. MR. JOLLY: As of anytime after tonight.

22. MR. COOLEY: Well, I can't be here tomorrow.

23. MR. JOLLY: I've got a case to try tomorrow. How
24. about the 18th? Next Thursday.

25. MR. NEFF: I've got a jury trial at Independence
26.

1. that day.
2. MR. JOLLY: How about next Friday?
3. MR. COOLEY: The 19th?
4. MR. JOLLY: Yes, sir.
5. MR. NEFF: I have discovery depositions set that
6. morning with Mr. Campbell at 10:30.
7. MR. JOLLY: Well, how about the afternoon?
8. MR. NEFF: I can do it that afternoon.
9. MR. JOLLY: Is that agreeable?
10. MR. KANE: What's that date?
11. MR. JOLLY: The 19th.
12. MR. NEFF: Is that agreeable with you, Raleigh?
13. MR. COOLEY: Yes. I'll make it agreeable. Are
14. we going to make it at 1:00 or 2:00 o'clock?
15. MR. JOLLY: 1:30? That's fine.
16. MR. NEFF: That's going to be down at his office?
17. THE COURT: She'll do it on a portable recorder
18. down at the office and I'll listen at it.
19. MR. JOLLY: 1:30 on the 19th.
20. THE COURT: I will not be there that day. But that
21. was understood to start with. I'll be in Pulaski that day.
22. MR. JOLLY: All right, sir.
23. MR. KANE: I'll come back that day and make my motion
24. then.
25. THE COURT: If anybody wants to make a motion when
- 26.

1. you've completed the evidence, just put it on that recorder.

2. MR. JOLLY: All right.

3. MR. NEFF: Mr. Kane, I will be agreeable with this:
4. if, if you want to make the motion at the conclusion of
5. his evidence, we can stipulate that you can make that motion
6. next Friday after Mr. Goad testifies and save you coming
7. back. I think that would be in order, if that would be
8. suitable to Mr. Jolly. I mean I don't want you to make a
9. special trip up here.

10. THE COURT: Oh, the case being submitted to the
11. Court, you don't have to make any motions any way.

12. MR. KANE: I'll be around.

13. THE COURT: Now, is there any of these records
14. you need them for anything?

15. MR. JOLLY: We don't, Judge.

16.

17. (Court is adjourned.)

18.

19.

20.

21.


22.

23.

24.

25.

26.

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT IS:		GALAX SAVINGS AND LOAN ASSOCIATION		23255	
		118 NORTH MAIN STREET			
		GALAX, VIRGINIA 24333			
		PAYMENT STOPPED		10-13-78	
				68-260 514	
CHECK RETURNED UNPAID TO PAYEE'S BANK SIGNATURE TOTAL OF INVOICES LESS DISCOUNTS TOTAL DEDUCTIONS AMOUNT OF CHECK		PAY TO THE ORDER OF National Worm Ranchers, Inc. \$ 3,995.00 GALAX SAVINGS 3995 DOLLARS 00 CTS			
 THE FIRST National BANK GALAX, VIRGINIA		PAYMENT STOPPED GALAX SAVINGS AND LOAN ASSOCIATION AUTH. SIGNATURE <i>Lisa Magnum</i>			
FOR		0514026021 03 58 11 811		0000399500	

87-228

Notified 87-394

Date 10-3-78

Betty Carter

FOR DEPOSIT ONLY
 BANK OF HENDERSONVILLE
 HENDERSONVILLE, TN
 NATIONAL RANCHERS, INC.
 0024287

Betty Carter

NOV 3 1978
 87-228
 ENDORSEMENT

TELETYPE

87-228

107

Plaintiff's Exhibit #1

DEFENDANT'S EXHIBIT # 1

Testament Warren Rucker Inc
(Name of Corporation)

I HEREBY CERTIFY TO *Bank of Hendersonville*
that at a meeting of the Board of Directors of *National Warren Rucker Inc.*, a corporation
organized under the laws of the State of *Tenn.* duly called (a quorum
being present) and held at the office of said corporation, No.....
in the city of *Rashville* State of *Tenn.* on the *22nd* day
of *August*, 197*E.*, the following resolutions were duly adopted and are now in full
force and effect:

Depository
and Signing
Resolution

RESOLVED, that the above bank be designated as a depository of this corporation and that
funds of this corporation deposited in said Bank be subject to withdrawal upon checks, notes, drafts, bills of
exchange, acceptances, undertakings of other orders for the payment of money when signed on behalf of this
corporation by any *One* of its following officers to wit:
(Number)

Borrowing
Resolution

RESOLVED, that the above bank, is hereby authorized to pay any such orders and also to
receive the same for credit of or in payment from the payee or any other holder without inquiry as to the
circumstances of issue or the disposition of the proceeds even if drawn to the individual order of any signing
officer or tendered in payment of his individual obligation.

RESOLVED, that.....

be and they hereby are authorized to borrow from time to time on behalf of this corporation from the above
bank sums of money for such period or periods of time, and upon such terms, rates of interest and amounts as
may to them in their discretion seem advisable, and to execute notes or agreements in the forms required by
said Bank in the name of the corporation for the payment of any sums so borrowed.

That said officers are hereby authorized to pledge or mortgage any of the bonds, stocks or other securities,
bills receivable, warehouse receipts or other property real or personal of the corporation, for the purpose of
securing the payment of any moneys so borrowed; to endorse said securities and/or to issue the necessary
powers of attorney and to execute loan, pledge or liability agreements in the forms required by the said Bank
in connection with the same.

That said officers are hereby authorized to discount with the above bank any bills receivable held by this
corporation upon such terms as they may deem proper.

That the foregoing powers and authority will continue until written notice of revocation has been delivered
to the above bank.

RESOLVED, that the secretary of this corporation be and he hereby is authorized to certify to
the above bank, the foregoing resolutions and that the provisions thereof are in conformity with the charter
and by-laws of this corporation.

I FURTHER CERTIFY that there is no provision in the charter or by-laws of said corporation limiting the
power of the board of directors to pass the foregoing resolutions and that the same are in conformity with the
provisions of said charter and by-laws.

I further certify that the following are the genuine signatures of the persons now holding office in said company as indicated opposite their respective signatures.

J.B. Christian President (Title)
Shirley Christian Secretary (Title)

IN WITNESS WHEREOF, I have hereunto set my hand as secretary of said corporation and affixed the corporate seal this 22 day of August, 19 71.

(CORPORATE SEAL)

Shirley Christian
Secretary of the Corporation

NOTE: In case the secretary or other recording officer is authorized to sign checks, notes, etc., by the above resolutions, this certificate must also be signed by a second officer of the corporation.

PRINTING CO.

DEFENDANT'S EXHIBIT #2

MEMBER FDIC

④

NATIONAL WORM RANCHERS INC
125 LAKE TERRACE DR
HENDERSONVILLE TN 37075

ACCOUNT NUMBER	DATE OF STATEMENT
0 02428 7	AUG 31 1978
BRANCH	PAGE 1
9	

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS.

AVERAGE BALANCE SINCE LAST STATEMENT	NUMBER OF CHECKS	TOTAL DEBITS PAID	TOTAL DEPOSITS AND CREDITS	BALANCE FROM THE PREVIOUS STATEMENT	
4,108	7	3,411.56	7,240.00		
CHECKS AND OTHER ITEMS PAID			DEPOSITS AND OTHER CREDITS	DATE	BALANCE
485.00			6,340.00	00 00	6,640.00
500.00				08 24	6,155.00
645.32	838.41			08 25	5,655.00
282.93				08 26	4,171.27
59.90	600.00		600.00	08 28	4,488.34
				08 29	3,828.44
				08 31	

PLEASE EXAMINE YOUR STATEMENT AT ONCE
IF NO ERROR IS REPORTED WITHIN 10 DAYS
THE STATEMENT IS CONSIDERED CORRECT

FOR YOUR CONVENIENCE SEE BACK
FOR RECONCILIATION FORM

OD - OVERDRAFT	DM - DEBIT MEMO
LP - LIST POSTED	SC - SERVICE CHARGE
EC - ERROR CORRECTED	RC - RETURN ITEM CHARGE
CM - CREDIT MEMO	DA - DEPOSIT ADJUSTMENT

MEMBER FDIC

NATIONAL WORM RANCHERS, INC.
125 LAKE TERRACE DR.
HENDERSONVILLE, TN 37075

ACCOUNT NUMBER	DATE OF STATEMENT
0 02428 7	SEP 30 1978
BRANCH	
0	PAGE 1

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

AVERAGE BALANCE SINCE LAST STATEMENT	NUMBER OF CHECKS	TOTAL DEBITS PAID	TOTAL DEPOSITS AND CREDITS	BALANCE FROM THE PREVIOUS STATEMENT	
1,790				3,828.44	
CHECKS AND OTHER ITEMS PAID			DEPOSITS AND OTHER CREDITS	DATE	BALANCE
95.00	3,000.00			08 31	3,828.44
104.05				09 01	733.44
226.07	651.00	708.80	1,500.00	09 05	2,129.39
395.00	36.00	100.00	2,995.00	09 07	543.52
207.00	66.41	283.50		09 08	2,450.61
3,150.00	6.00 RC			09 09	705.39-
200.00	18.00 RC			09 11	923.39-
19.25	18.00 RC			09 12	960.64-
63.70	80.00	124.37	3,995.00		
225.00	375.00	1,250.00		09 14	916.29
200.00				09 16	716.29
49.70	110.06		1,500.00	09 18	2,056.53
81.00	96.74	104.25			
116.48	150.00	164.50			
180.00	238.19	255.15			
283.50	305.81	6.00 RC		09 21	74.91
400.68	258.01	25.90	1,312.73		
300.00			9,000.00	09 22	8,403.05

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YOUR STATEMENT IS CONSIDERED CORRECT.

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FOR RECONCILIATION FORM.

OO - OVERDRAFT	DM - DEBIT MEMO
IP - LIST POSTED	SC - SERVICE CHARGE
EC - ERROR CORRECTED	RC - RETURN ITEM CHARGE
CM - CREDIT MEMO	DA - DEPOSIT ADJUSTMENT

MEMBER FDIC

NATIONAL WORM RANCHERS INC
125 LAKE TERRACE DR
HENDERSONVILLE TN 37075

ACCOUNT NUMBER

0 02428 7

DATE OF STATEMENT

SEP 30 1978

BRANCH

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PAGE 2

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

AVERAGE BALANCE SINCE LAST STATEMENT	NUMBER OF CHECKS	TOTAL DEBITS PAID	TOTAL DEPOSITS AND CREDITS	BALANCE FROM THE PREVIOUS STATEMENT	
1,790	76	30,648.52	28,877.73	-	3,828.44
CHECKS AND OTHER ITEMS PAID			DEPOSITS AND OTHER CREDITS	DATE	BALANCE
				09 23	8,403.05
400.00	2,000.00			09 23	6,003.05
450.00	600.00	137.77			
250.00	265.24	297.33			
12.00 RC				09 25	3,990.71
1,167.50	18.00 RC			09 26	2,805.21
100.00	200.00	1,195.00	3,995.00		
1,799.45	2,800.00	51.95	4,550.00		
53.95	74.20	135.00			
157.50	181.00	238.19			
318.48	18.00 RC			09 28	4,027.49
489.00	500.00	843.39			
12.00 RC				09 29	2,183.10
70.45	76.00	6.00 RC	6.00		
3.00 SC			6.00		
			6.00		
			6.00		
			6.00	09 30	2,057.65

PLEASE EXAMINE YOUR STATEMENT AT ONCE.
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THE STATEMENT IS CONSIDERED CORRECT.

FOR YOUR CONVENIENCE SEE BACK
FOR RECONCILEMENT FORM.

OD - OVERDRAFT	DM - DEBIT MEMO
LP - LIST POSTED	SC - SERVICE CHARGE
EC - ERROR CORRECTED	RC - RETURN ITEM CHARGE
CM - CREDIT MEMO	DA - DEPOSIT ADJUSTMENT

PSC #82024

MEMBER FDIC

NATIONAL WORM RANCHERS INC
125 LAKE TERRACE DR
HENDERSONVILLE TN 37075

ACCOUNT NUMBER DATE OF STATEMENT

0 02428 7 OCT 31 1978

BRANCH

0 PAGE 1

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

AVERAGE BALANCE SINCE LAST STATEMENT	NUMBER OF CHECKS	TOTAL DEBITS PAID	TOTAL DEPOSITS AND CREDITS	BALANCE FROM THE PREVIOUS STATEMENT	
1,707				2,057.65	
CHECKS AND OTHER ITEMS PAID			DEPOSITS AND OTHER CREDITS	DATE	BALANCE
2,520.00	24.00 RC		6.00	09 30	2,057.65
30.63	158.73	250.00	2,055.00	10 02	480.35-
1,000.00	42.60			10 03	92.69
58.30	99.32	200.00	1,600.00	10 05	424.07
405.00	500.00	6.00 RC	200.00	10 06	229.77
3.00	160.30	225.00	6.00	10 07	229.77
6.00 RC			3,455.00	10 09	2,875.89
6.00 RC				10 10	1,308.84
454.40	127.26	227.22		10 12	3,498.23
74.91	30.00	134.49		10 13	3,218.53
160.00	218.85	225.00			
723.80					
3.00	3.00	58.00	2,435.00		
163.61	18.00 RC		15.00		
420.00	476.30	1,373.77			
36.49	60.67	67.90			
99.32	112.50	123.75			
24.00 RC					

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FOR RECONCILEMENT FORM

OO - OVERDRAFT	DM - DEBIT MEMO
LP - LIST POSTED	SC - SERVICE CHARGE
EC - ERROR CORRECTED	RC - RETURN ITEM CHARGE
CM - CREDIT MEMO	DA - DEPOSIT ADJUSTMENT

MEMBER FDIC

NATIONAL WORM RANCHERS INC
125 LAKE TERRACE DR
HENDERSONVILLE TN 37075

ACCOUNT NUMBER	DATE OF STATEMENT
0 02423 7	007 31 1978
BRANCH	
0	PAGE 2

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

AVERAGE BALANCE SINCE LAST STATEMENT	NUMBER OF CHECKS	TOTAL DEBITS PAID	TOTAL DEPOSITS AND CREDITS	BALANCE FROM THE PREVIOUS STATEMENT	
1,707					
CHECKS AND OTHER ITEMS PAID			DEPOSITS AND OTHER CREDITS	DATE	BALANCE
150.00	18.00 RC		6.00	10 14	3,218.53
			6.00		
			6.00		
			6.00		
			60.67	10 14	3,135.20
20.00	51.00	52.62	150.00		
30.00 RC				10 16	3,151.58
3,105.00	24.00 RC			10 17	2.58
5.00	6.00 RC		6.00	10 19	42-
12.00 RC				10 20	12.42-
12.00 RC			6.00		
			6.00		
			3,975.00	10 21	3,982.58
78.00 RC			6.00	10 23	3,910.58
18.00 RC				10 24	3,892.58
54.00 RC				10 26	3,838.58
1,665.00	24.00 RC			10 27	2,149.58
			6.00		

PLEASE EXAMINE YOUR STATEMENT AT ONCE.
IF NO ERROR IS REPORTED WITHIN 10 DAYS,
THE STATEMENT IS CONSIDERED CORRECT.

FOR YOUR CONVENIENCE SEE BACK
FOR RECONCILEMENT FORM

OD - OVERDRAFT	DM - DEBIT MEMO
LP - LIST POSTED	SC - SERVICE CHARGE
EC - ERROR CORRECTED	RC - RETURN ITEM CHARGE
CM - CREDIT MEMO	DA - DEPOSIT ADJUSTMENT

NATIONAL WORK RANCHERS INC
125 LAKE TERRACE DR
HENDERSONVILLE, TN 37075

ACCOUNT NUMBER	DATE OF STATEMENT
02428 Z	09 31 1978
BRANCH	PAGE
78	3

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

AVERAGE BALANCE SINCE LAST STATEMENT	NUMBER OF CHECKS	TOTAL DEBITS PAID	TOTAL DEPOSITS AND CREDITS	BALANCE FROM THE PREVIOUS STATEMENT	
1,707	74	18,600.28	16,549.67	2,057.65	
CHECKS AND OTHER ITEMS PAID			DEPOSITS AND OTHER CREDITS	DATE	BALANCE
85.31	100.41	105.52	6.00	10 28	2,155.58
295.28	400.00		6.00		
			6.00	10 28	1,187.06
71.00	154.55	232.00			
275.00	6.00 RC			10 30	448.51
114.47	300.00	24.00 RC			
3.00 SC				10 31	7.04

PLEASE EXAMINE YOUR STATEMENT AS SOON AS POSSIBLE.
IF NO ERROR IS REPORTED WITHIN 10 DAYS,
THE STATEMENT IS CONSIDERED CORRECT.

FOR YOUR CONVENIENCE SEE BANK
STATEMENT CONCURRENCE FORM.

OM - OVERDRAW	OM - DEBIT MEMO
LP - LOST POSTER	SC - SERVICE CHARGE
EC - ERROR CORRECTION	RC - RETURN ITEM CHARGE
CM - CREDIT MEMO	DA - DEPOSIT ADJUSTMENT

MEMBER FDIC

NATIONAL WORM RANCHERS, INC.
125 LAKE TERRACE DR.
HENDERSONVILLE TN 37075

ACCOUNT NUMBER

0 02428 7

DATE OF STATEMENT

NOV 30 1978

BRANCH

13

PAGE 2

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

AVERAGE BALANCE SINCE LAST STATEMENT		NUMBER OF CHECKS	TOTAL DEBITS PAID	TOTAL DEPOSITS AND CREDITS	BALANCE FROM THE PREVIOUS STATEMENT	
212-		17	426.00	78.00	7.04	
CHECKS AND OTHER ITEMS PAID				DEPOSITS AND OTHER CREDITS	DATE	BALANCE
48.00 RC				6.00	11 25	328.96-
				6.00		
				6.00		
				6.00		
				6.00		
6.00 RC				6.00	11 25	334.96-
					11 27	340.96-

PLEASE EXAMINE YOUR STATEMENT AT ONCE.
IF AN ERROR IS REPORTED WITHIN 10 DAYS,
THE STATEMENT IS CONSIDERED CORRECT.

FOR YOUR CONVENIENCE SEE BACK
FOR RECONCILIATION FORM

OD - OVERDRAFT	DM - DEBIT MEMO
LP - LIST POSTED	SC - SERVICE CHARGE
EC - ERROR CORRECTED	RC - RETURN ITEM CHARGE
CM - CREDIT MEMO	DA - DEPOSIT ADJUSTMENT

NATIONAL WORM RANCHERS INC
125 LAKE TERRACE DR
HENDERSONVILLE TN 37075

ACCOUNT NUMBER

0 02428 7

DATE OF STATEMENT

NOV 30 1978

BRANCH

0

PAGE 1

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

AVERAGE BALANCE SINCE LAST STATEMENT		NUMBER OF CHECKS		TOTAL DEBITS PAID		TOTAL DEPOSITS AND CREDITS		BALANCE FROM THE PREVIOUS STATEMENT			
212-											
CHECKS AND OTHER ITEMS PAID						DEPOSITS AND OTHER CREDITS		DATE		BALANCE	
								10 31		7.04	
60.00 RC								11 02		52.96-	
12.00 RC								11 03		64.96-	
12.00 RC						6.00					
						6.00		11 04		64.96-	
18.00 RC								11 06		82.96-	
30.00 RC								11 07		112.96-	
42.00 RC								11 09		154.96-	
6.00 RC								11 10		160.96-	
6.00 RC						6.00		11 11		160.96-	
24.00 RC								11 13		184.96-	
30.00 RC								11 14		214.96-	
48.00 RC								11 16		262.96-	
12.00 RC								11 17		274.96-	
12.00 RC						6.00					
						6.00		11 18		274.96-	
12.00 RC								11 21		286.96-	
48.00 RC								11 24		334.96-	
						6.00					
PLEASE EXAMINE YOUR STATEMENT AT ONCE IF AN ERROR IS REPORTED WITHIN 90 DAYS THE STATEMENT IS CONSIDERED CORRECT						OM - OVERDRAFT		DM - DEBIT MEMO			
						LP - LOST POSTAGE		SC - SERVICE CHARGE			
						EC - ERROR CORRECTED		RC - RETURN ITEM CHARGE			
						CM - CREDIT MEMO		DA - DEPOSIT ADJUSTMENT			

NATIONAL WORM RANCHERS INC
125 LAKE TERRACE DR
HENDERSONVILLE TN 37075

ACCOUNT NUMBER

DATE OF STATEMENT

002428.7

DEC 30 1978

BRANCH

0

PAGE 1

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

AVERAGE BALANCE SINCE LAST STATEMENT	NUMBER OF CHECKS	TOTAL DEBITS PAID	TOTAL DEPOSITS AND CREDITS	BALANCE FROM THE PREVIOUS STATEMENT	
344-		6.00		340.96-	
CHECKS AND OTHER ITEMS PAID			DEPOSITS AND OTHER CREDITS	DATE	BALANCE
6.00 RC				11 30 12 07	340.96- 346.96-

PLEASE EXAMINE YOUR STATEMENT AT ONCE.
IF AN ERROR IS REPORTED WITHIN 10 DAYS
THE STATEMENT IS CONSIDERED CORRECT.

FOR YOUR CONVENIENCE SEE BACK
FOR RECONCILIATION FORM

OD - OVERDRAFT	DM - DEBIT MEMO
LP - LIST POSTED	SC - SERVICE CHARGE
EC - ERROR CORRECTED	RC - RETURN ITEM CHARGE
CM - CREDIT MEMO	DA - DEPOSIT ADJUSTMENT

PSK 12/2/78

DEFENDANT'S EXHIBIT # 4

Done Et 4. May 13
(20)

DATE 10/13/78 WITHDRAWAL APPLICATION and RECEIPT ACCOUNT NUMBER 12799-2

Request is hereby made for the withdrawal of

DOLLARS \$ 3995.⁰⁰/₁₀₀

from the above numbered account in the GALAX SAVINGS and LOAN ASSOCIATION of Galax, Virginia, and I acknowledge receipt of the above stated sum, which the Association is hereby authorized to charge to the account as a withdrawal.

☐ CASH ☒ MAKE CHECK PAYABLE TO National Warm Springs

*Signature for Robert E. Head

*Signature Mrs. Robert E. Head

FOR OFFICE USE ONLY	
CHECK NO.	APPROVED
DIVIDEND	TELLER

NOTE: Signature of any one co-tenant (with right of survivorship) is binding on the others.
Share Account Book Must Accompany This Receipt.

Good 43 - May 13 (90)
 Account No. 118 Name Galaxy Savings & Loan No. _____

Please refuse to pay Check No. 3255 Amount 3,995.00

Payable to National Union Growers Dated Oct 13, 1978

I agree to hold you harmless for all expenses and costs incurred by you on account of refusing payment of said check and agree not to hold you liable on account of payment contrary to this request if same occurs through inadvertance or accident. And it is understood that this order will automatically expire at such time as established by banking regulations, unless renewed in writing. Homestead exemptions waived as to this obligation.

Signed Galaxy Savings & Loan Assoc.
Floyd Kitchell

Received by Clara Date Rec'd. 10/23/78 Time 9:45 How Received. phon

Duplicate 7 Dated _____ No. _____ Marked Duplicate _____

Reason for stop payment is _____

Telephone _____ Address _____

RELEASE: Please release Stop Payment on the above check.

FIRST NATIONAL BANK
 GALAX, VIRGINIA

Signed _____

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT(S)		GALAX SAVINGS AND LOAN ASSOCIATION		23348	
FOR <u>ROBERT G. GAD</u>		118 NORTH MAIN STREET GALAX, VIRGINIA 24333		63-260 514	
TOTAL OF INVOICES		PAY TO THE ORDER OF <u>National Western Bank</u>		<u>Oct. 24</u> 19 <u>78</u>	
LESS DISCOUNT		GALAX SAVINGS AND LOAN ASSOCIATION		<u>3925</u> ⁰⁰ / ₁₀₀	
LESS		<u>3995</u> <u>00</u> CTS		DOLLARS	
TOTAL DEDUCTIONS		THE FIRST <i>National</i> BANK		GALAX SAVINGS AND LOAN ASSOCIATION	
AMOUNT OF CHECK		GALAX, VIRGINIA		AUTH: SIGNATURE	
FOR _____		<u>Frederick N. K. K.</u>		10514026020 03 5811 811	

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GOAD EXHIBIT 1

SAVE WITH SAFETY AND PROFIT				
DATE	MEMO	DEPOSITS AND INTEREST	WITHDRAWALS	BALANCE
6-30-78	DV2	1935		1,494.86 GSL
JUL 17 78		15,000.00		16,494.86 GSL
AUG 7 78		755.38		17,250.24 GSL
AUG 26 78		2,395.00		19,645.24 GSL
SEP 25 78			833.00 -	18,812.24 GSL
93078NB		16723		18,979.47 1A
13OCT78			3,995.00	14,984.47 1A
20OCT78		367.19		15,351.66 1A
17NOV78		593.19		15,944.85 1A
123178NB		21113		16,155.98 A 1
MAR0179		36521		16,521.19 A 1
MAR 12 79		365.21		16,886.40 GSL
033179NB		21475		17,101.15 A 1
MAY 1,79			10,000.00	7,101.15 A 1
063079NB		13647		7,237.62 A 1
093079NB		9951		7,337.13 A 1
123179NB		10088		7,438.01 A 1
011480NB		1441		7,452.62 A 1
14JAN80	CANCELLED		7,452.62	.00-A 1
GOAD EXHIBIT #1				

①

SAVE WITH SAFETY AND PROFIT

DATE	MEMO	DEPOSITS AND INTEREST	WITHDRAWALS	BALANCE
JUL 7 75		1 1,014.63		1 1,014.63 GSL
9-30-75	DV3	1 44.57		1 1,159.20 GSL
DEC 17 75			5 00.00 -	1 0,659.20 GSL
12-30-75	DV4	1 44.27		1 0,803.47 GSL
JAN 5 76			5 50.00 -	5,303.47 GSL
FEB 4 76			4 00.00 -	1,303.47 GSL
	DV1	34.60		1,338.07 GSL
JUN 19 76		5 00.00		1,838.07 GSL
6-30-76	DV2	17.56		1,855.63 GSL
AUG 23 76		15 00.00		3,355.63 GSL

SEP 30 76	DV3	30.92		3,386.55 GSL
SEP 30 76		98.00		3,484.55 GSL
12-31-76	DV4	45.74		3,530.29 GSL
3-31-77	DV1	46.33		3,576.62 GSL
			15 00.00 -	2,076.62 GSL
4-30-77	DV2	27.26		2,103.88 GSL
	DV3	27.61		2,131.49 GSL
DEC 15 77			7 00.00 -	1,431.49 GSL
12-30-77	DV4	24.91		1,456.40 GSL
3-31-78	DV1	19.11		1,475.51 GSL