

FARMERS & MERCHANTS BANK
OF FOLEY, A CORPORATION,

COMPLAINANT,

VS

W. B. BURMEISTER,

RESPONDENT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

BOND OF RECEIVER

KNOW ALL MEN BY THESE PRESENTS, That we, A. A. Rich as principal and the undersigned as sureties, are held and firmly bound unto T. W. Richerson, Register of the Circuit Court, Equity Side, of Baldwin County, State of Alabama, and his successors in office in the sum of \$2,000.00 for the payment of which to the said Register or his successors, we bind ourselves, our and each of our successors, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 15 day of May, 1933.

Now the condition of this obligation is that, whereas, the above bounden A. A. Rich was, by the order of the Hon. F. W. Hare, Judge of the Circuit Court, Equity Side, of Baldwin County, Alabama appointed Receiver and authorized and directed to take possession and charge and control of all of the property and assets of the business conducted under the trade name of Premier Floral Company and to administer the same under and by direction of the orders of said Court;

And, Whereas, the said A. A. Rich has heretofore given bond in the sum of \$1,000.00 as directed by said order of Court but by further order dated May 10, 1933 the said Rich has been ordered to give additional bond in the sum of \$2,000.00, to make his aggregate bond \$3,000.00.

Now if the said A. A. Rich shall faithfully perform his duties as such Receiver and true accounting make of all monies and properties received by him then this obligation shall be null and void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and date first above written.

A. A. Rich (SEAL)

D. H. Gaarl (SEAL)

W. B. Burmeister (SEAL)

Taken and approved this ___ day of May, 1933.

Register.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

1110
equity
**FARMERS & MERCHANTS BANK
OF FOLEY, A CORPORATION,**
COMPLAINANT,

VS

W. B. BURMEISTER,
RESPONDENT.

Filed May 27, 1933
Michigan
Register

BOND OF RECEIVER

LLOYD A. MAGNEY,
Attorney for Complainant.

FARMERS AND MERCHANTS BANK
OF FOLEY, A CORPORATION,

Complainant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY,
ALABAMA.

VERSUS.

IN EQUITY.

W. B. BURMEISTER,

Respondent.

Now comes the respondent in the above entitled
cause and having fully answered the bill of complaint in
said cause moves the Court to dissolve the temporary injunc-
tion heretofore granted and to discharge the receiver.

John N. Allen

L. Larry J. Smith

SOLICITORS FOR RESPONDENT.

(8)

RECORDED

Motion to Dissolve
Injunction

Farmers & Merchants
Bank of Jolly, a corp
vs

W. B. Burmeister

Filed May 6, 1933
O. Richardson
Registrar.

October 19th, 1934.

Hon. Lloyd A. Hagney,
Attorney at Law,
Foley, Alabama.

Re: Farmers & Merchants Bank vs. Burneister.

Dear Mr. Hagney:

Thanks for your letter of the 18th.

After reading over the Decree in the above styled cause again and considering your letter I am of the opinion that all of the costs should be paid by the Bank, even including the cost of the Transcript; for we read in the decree as follows:-

"It is Further ordered, adjudged and decreed that the bill of complaint in this cause be and the same is hereby dismissed, and complaint in this cause, Farmers & Merchants Bank of Foley, be and it is hereby taxed with all of the costs in this cause, for which let execution issue."

After all, that is part of the costs, too, and when turned in to this office should be credited to the Ex-Clerk fees. I am sure that you will see that this is correct, and I will receive a check from Farmers & Merchants Bank for the full amount of the costs, \$203.00, within the next few days.

Thanking you for your usual prompt attention in such matters, and assuring you that it is a pleasure to serve you, I am

Yours very truly,

L. A. Stone, Clerk.

WAS:ah

The State of Alabama,
Baldwin County

Circuit Court of Baldwin County, In Equity

To Any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon W. B. BURMEISTER
(Foley, Ala)

of BALDWIN County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by FARMERS & MERCHANTS BANK OF FOLEY, a corp

against said W. B. BURMEISTER

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 2nd day of

MAY 1933

T. W. Richerson Register

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

RECORDED

SERVE ON W. B. BURMEISTER

Circuit Court of Baldwin County
In Equity

No. _____

SUMMONS

FARMERS & MERCHANTS BANK OF
FOLEY, a corporation

vs.

W. B. BURMEISTER

ELOYD A. MAGNEY

Solicitor for Complainant

Recorded in Vol. _____ Page _____

5
THE STATE OF ALABAMA,
BALDWIN COUNTY

Received in office this 2nd

day of May 1933 19

W. R. Stuart
Sheriff

Executed this 2nd

day of

May 1933 19

by leaving a copy of the within Summons with

W. B. Burmeister

W. R. Stuart Defendant

Sheriff

By _____

Deputy Sheriff

FARMERS & MERCHANTS BANK
OF FOLEY, A CORPORATION,

COMPLAINANT,

vs

W. B. BURMEISTER,

RESPONDENT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

WRIT OF INJUNCTION

STATE OF ALABAMA)

BALDWIN COUNTY.)

TO ANY SHERIFF OF THE STATE - GREETING;-

We command you that without further delay you execute this writ and due return thereof make to us instantler at the term of Circuit Court, in Equity, to be held at Bay Minette, Alabama on the 3rd day of _____, 1933.

TO W. B. BURMEISTER; GREETING:

Whereas, Farmers & Merchants Bank of Foley, a corporation, has exhibited its Bill of Complaint in the said Circuit Court, in equity and has obtained from the Hon. F. W. Hare, Judge of said Circuit Court, an order for the issuance of an injunction to restrain and enjoin you as hereinafter mentioned; and,

Whereas, the said Farmers & Merchants Bank of Foley has, in accordance with said order, entered into bond with security in the sum of \$ 500⁰⁰ payable to and approved by the Register of said Circuit Court and conditioned according to law:

Now, Therefore, you, the said W. B. Burmeister, are hereby commanded and strictly enjoined from cutting, removing, disposing of, or in anywise interfering with any of the flowers or bulbs or any of the other property whatsoever, now located in Baldwin County, Alabama and heretofore known as to the property of Premier Floral Company and from doing anything whatever to change the status now existing with reference to all of said property, all until the further order of this court.

WITNESS THE HAND OF THE REGISTER AND THE seal of said Circuit Court, In Equity, this 1st day of May 1933.

J. M. Rice
Register.

FARMERS & MERCHANTS BANK
OF FOLEY, A CORPORATION,
COMPLAINANT,

VS

W. B. BURMEISTER,
RESPONDENT.

WRIT OF INJUNCTION

Filed May 1st 1933
W B Burmeister
Register

Serve copy on
W B Burmeister

LLOYD A. MAGNEY,
Attorney for Complainant.

Executed May 2nd 1933
by serving copy ~~of writ of~~
~~complaint on~~ W B Burmeister
Respondant
W R Street Sheriff
By _____ Deputy Sheriff

CLERK OF COURT
BALDWIN COUNTY, ALABAMA

Farmers & Merchants Bank)

of Foley, a corporation.)

Complainant,)

Vs.)

In the Circuit Court Baldwin

County, Alabama.

W. B. Burmeister,)

In Equity.

Respondent.)

This cause coming on to be heard is submitted for decree on Respondent's motion to dissolve the injunction and discharge the receiver, amended sworn Bill of Complaint, and answer to amended Bill of Complaint, and upon consideration of same I am of the opinion that said motion is not well taken.

It is, therefore, ordered, adjudged and decreed by the Court that said motion to dissolve the injunction and discharge the receiver be, and same hereby is, overruled and denied.

This 9th day of May, 1933.

F. W. Hare
Judge.

11
RECORDED
Farmers + Merchants
Bank of Foley, a corp
vs.

W.B. Burmeister.

RECORDED

Decree
granting motion
to dissolve insin-
uation and discharge
Reliever.

Filed May 10, 1933

M. Richardson

Register

RESPONDENT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

BILL OF COMPLAINT

TO THE HON. F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA. IN CHANCERY SITTING:-

PART ONE

Your Complainant, Farmers & Merchants Bank of Foley, respectfully shows to the Court that it is a corporation organized and existing under and by virtue of the laws of the State of Alabama with its principal place of business in Foley, Baldwin County, Alabama; that the Respondent W. B. Burmeister is over the age of twenty-one years and a resident of Foley, Baldwin County, Alabama.

PART TWO

And humbly complaining against the said W. B. Burmeister, Respondent, Your Complainant respectfully alleges and shows to the Court:-

1. That during the year 1929 one F. W. Krahe, one A. J. Hartung and the Respondent came to Foley, Baldwin County, Alabama and engaged in the business of growing and producing cut flowers for the market, largely gladioli, under the trade name of Foley Floral Company and Premier Floral Company. That they rented land and erected buildings and an irrigation system and went into the business of producing cut flowers on a large scale.

2. That it was represented by all of said parties, to Your Complainant and to others, that the said F. W. Krahe was the sole owner of said business and all of the property connected therewith and that the said Hartung and Respondent were merely employees of the said F. W. Krahe, they being experienced men in the business of producing cut flowers and bulbs for the market, whereas, the said F. W. Krahe was not so experienced but that the said Krahe was

financing the business and was the sole owner thereof.

3. That after said business had been in existence for some time, the said Respondent prepared on the typewriter a statement to the effect that the said F. W. Krahe was the sole owner of said Foley Floral Company and that should there be any change in the ownership of the Foley Floral Company Complainant would be notified at once and said statement was signed by the said F. W. Krahe and filed with Complainant.

4. That thereafter and on or about the 1st day of October, 1931, and for the purpose of obtaining credit from Complainant, Respondent prepared a detailed inventory of all of the property of said Foley Floral Company and Premier Floral Company, which was merely another trade name used by said F. W. Krahe and Foley Floral Company, and upon the strength of such statement and inventory the Complainant loaned to the said Premier Floral Company the sum of ONE THOUSAND & 00/100 (\$1,000.00) DOLLARS, which sum of money was placed to the credit of said Premier³ Floral Company by it used and expended in its business upon checks signed partly by the said F. W. Krahe and partly by the Respondent.

5. That at the time of making such loan of money the Complainant took from the said Premier Floral Company, by F. W. Krahe, as security for said loan, a chattel mortgage which conveyed to the Complainant all of the property hereinafter described and which said mortgage was, by Complainant, duly recorded on the 18th day of December, 1931 in Mortgage Book No. 52 at Page 577 in the office of the Judge of Probate of Baldwin County, Alabama.

6. That at all of the times hereinbefore mentioned, the Respondent was actively in charge of the business of said Premier Floral Company or Foley Floral Company, was dealing almost daily with the Complainant and was fully advised as to all of the foregoing matters and knew all of the facts hereinbefore set forth.

7. That after said loan of money was made as aforesaid, the business was carried on by the Respondent as theretofore, and Complainant had no knowledge or notice of any change in the situation until during the month of February, 1933 at which time the

Respondent came to Complainant and stated that the said F. W. Krahe had abandoned said business and gone back to Michigan and left him, the Respondent, in charge of the property; that he desired to go on with the business and desired to rent all of the property covered by said loan from Complainant and to use the bulbs and cut and sell the flowers under a rental contract with the Complainant; that Complainant then notified said Respondent that it did not own the property as yet, having merely a chattel mortgage upon it and having agreed that the possession might remain with the mortgagor but that if the said Krahe had in fact abandoned said property that Complainant would proceed at once to take possession of said property and proceed at once to foreclose its mortgage and that upon acquiring full title to and possession of said property it would then sell the same to the Respondent for the amount of Complainant's indebtedness upon such terms as might be mutually agreeable. That Respondent agreed to such plan and went with the Cashier of the Complainant and assisted said Complainant to make a complete inventory of all of the property of said Premier Floral Company which was covered by said mortgage and that thereupon Complainant took possession of said property but left the same in the charge and control of the Respondent and proceeded to foreclose its said mortgage and on the 6th day of March, 1933 Complainant foreclosed its said mortgage, exposing all of the property covered by said mortgage to sale at public auction and at said sale bid in said property for the then amount of its indebtedness, being the sum of TWELVE HUNDRED SEVENTY-ONE & 00/100 (\$1271.00) DOLLARS and the auctioneer executed to the Complainant the Bill of Sale for all of the property covered by said mortgage, said property being described as follows:-

Cold storage house.
Cold storage plant
and equipment of every description.
That part of the building
used for office.
Irrigation system.
834 screen bottom trays.
62 wooden bottom trays.
1 bulb schute.
4 packing tables.

1 posthole digger.
2 hook hoes.
1 dust sprayer.
2 sprinkling cans.
1 hook cultivator
2 potato planters.
1-5 gal. oil can.
1-14 tooth cultivator.
1 Detroit Gas Engine.
1 iron water tank.
3 coil of pipe.

1 bulb screen base.
2 pipe wrenches.
1 Mike saw.
1 Oil can.
3 ½ rolls wrapping paper.
½ roll two-ply twine.
2 pulley wheels
1 wheel barrow
500 paper boxes 36 x 36 x 8.
70 paper boxes 48 x 12 x 8.
1 drill press.
200 cotton bags.
1 vice.
1 emery wheel.
2 potato hooks.
3 rakes.
3 hoes.
1 scuffel hoe.
1927 Model Hudson Sedan.

2 water pumps.
1 box of valves and fittings.
1200 feet of irrigation pipe
with fittings.
2 saw horses.
1 wheel spray, with pump.
1 row marker.
1 rotary hoe.
16 water tanks.
100 flower drums.
5 bales of drum heads.
4 water buckets.
500 lbs. cork.
17 ice cans.
4 ft. table.
1-12 foot electric cord.
1 scoop shovel.
1 hand spray tank.
600 M. gladioli bulbs.

8. That the most valuable part of said property is a large number, estimated at 600,000, blooming size gladioli bulbs; that these bulbs are in the ground and growing and are just about to produce a crop of cut flowers; that said bulbs are planted in ground owned neither by Complainant nor Respondent but rented by the Respondent and the same cannot at this time be moved and disturbed without destroying the crop of flowers and without destroying the bulbs.

9. That after having proceeded to foreclose its mortgage as agreed with the Respondent, the Complainant began negotiations with the Respondent for the sale and purchase of all of said property when, on April 20, 1933, for the first time, the Respondent asserted that he was the owner of all of said gladioli bulbs, that the said F. W. Krahe had never owned them and that the mortgagethereon executed by the said Premier Floral Company by F. W. Krahe to the Complainant did not convey any title to said gladioli bulbs and that the Respondent would not buy said bulbs from Complainant for the reason that he already owned the same and had possession of them and Complainant avers that this was a fraud committed by Respondent upon Complainant in that the said Respondent knowingly permitted the said F. W. Krahe to represent to the Complainant that said property belonged to him and said Respondent knowingly permitted the said F. W. Krahe to borrow money from Complainant and

make a mortgage upon all of said property and said Respondent at all times stated, acknowledged and admitted that said bulbs were the property of the said F. W. Krahe and Complainant avers that the Respondent is now estopped to deny that said bulbs were the property of said F. W. Krahe or are now the property of Complainant.

10. Complainant further avers that said bulbs are now about to produce flowers and that the same must be immediately cut and sold or the same will be lost and wasted; that the said bulbs will require constant care and attention to protect, preserve and mature the same; that it is impossible for Complainant to dig said bulbs and take actual physical possession of the same for the reason that to do so would kill and destroy both the bulbs and the flowers; that said bulbs are growing in the land leased by Respondent and Complainant has been warned by Respondent not to trespass upon said land; that Respondent is insolvent and unable to respond in damages and that for all of said reasons Complainant has no adequate remedy of law and must submit itself to the jurisdiction of this Court of Chancery.

11. The Complainant hereby submits itself to the jurisdiction of the Court and offers to do whatever the Court may consider necessary to do equity to the Respondent.

12. Complainant further avers that unless he be restrained by the order of this Court, Respondent will cut and sell the flowers from said bulbs and will keep and retain the money and that unless Respondent be restrained from so doing by the order of this Court that the Complainant will wholly lose its property.

13. Complainant further avers that it is essential that the flowers be cut and marketed promptly or they will be wholly lost and that for this reason it is necessary that a receiver be appointed by the Court to take charge of all of said property and to cut and market the flowers and cultivate and protect the bulbs until such time as this Court can settle and determine the rights of the parties.

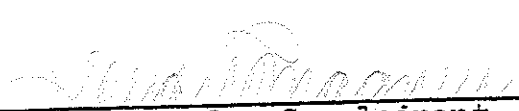
PART FOUR

Wherefore, Complainant prays that Your Honor will grant to it the writ of summons of the State of Alabama to be directed to the said W. B. Burmeister thereby commanding him to personally appear before Your Honor in this Honorable Court within thirty (30) days from the service thereof and then and there to answer all and singular the premises, and to stand to and abide such order and decree thereon as to this Honorable Court shall seem meet; and Your Complainant shall ever pray, etc.

And may it further please Your Honor to grant unto Your Complainant a writ of injunction of the State of Alabama to be directed to said W. B. Burmeister restraining him from cutting, removing, disposing of, or otherwise interfering with any of the property hereinbefore described until the further order of this Court.

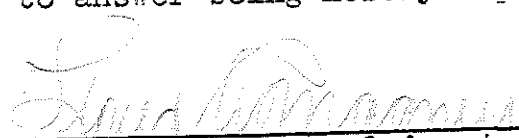
And Your Complainant further prays that Your Honor will appoint some suitable person as receiver to take charge and control of all of said property and to administer the same under the direction of this Court and to sell the same and apply the proceeds thereof as may be directed by this Court.

And if Your Complainant has not asked for the proper relief, Your Complainant further prays that it may have such other, further, or different relief in the premises as may be right and proper and as this Honorable Court may consider just and equitable; and Your Complainant shall ever pray.


Solicitor for Complainant.

FOOT NOTE

The Respondent, W. B. Burmeister, is required to answer the allegations of Part Two of the Bill from Section 1-13, both inclusive, but not under oath, oath to answer being hereby expressly waived.


Solicitor for Complainant.

STATE OF ALABAMA)
BALDWIN COUNTY.)

E. F. Sanders being first duly sworn, on his oath deposes and says that he is the Cashier of Farmers & Merchants Bank of Foley, a corporation; that he has read and knows the contents of the foregoing Bill of Complaint and that the facts therein set forth are true.

Subscribed in my presence and sworn to before me this 29th
April
day of ~~May~~, 1933.

A. W. Hare
Notary Public.
Circuit Judge

FIAT

TO THE HON. T. W. RICHESON, REGISTER IN CHANCERY, BALDWIN COUNTY,

ALABAMA:-

Upon Complainant's filing bond in the sum of \$ 500⁰⁰

let Writ of Injunction issue according to the prayer of the bill.

Dated this 29th day of May, 1933.

T. W. Hare

Judge.

FARMERS & MERCHANTS BANK,
A Corporation,

Plaintiff,

-vs-

W. B. BURMEISTER,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN CHANCERY

AFFIDAVIT

STATE OF ALABAMA:
BALDWIN COUNTY:

W. B. Burmeister being first duly sworn on his oath deposes and says: that he is the defendant in the above entitled action. That on or about the 5th day of May, 1933, Mr. A. A. Rich presented his credentials and took charge of affiant's business as the receiver of this court. The pre-cooling of flowers before shipment is an essential part of their preparation for shipment and inasmuch as the operation of the cooling plant and machinery was something which Mr. Rich was not familiar with he immediately arranged with this affiant to continue the operation of the cooling plant and the pre-cooling of the flowers at a stipulated price per hamper. For six days Mr. Rich was in complete charge of the business, except the cooling, as receiver, but on May 10th, 1933, Mr. A. J. Hartung entered into an agreement with Mr. Rich to perform the services he had for years been accustomed to performing and from that time on Mr. Hartung did take complete charge of the selection of the flowers to be cut, the cutting, packing and shipping of them. Mr. Hartung was in complete charge of all of the employees except that they were paid by Mr. Rich as receiver. During the time the shipments continued which was from May 5th to May 30th, or a total of 25 days, Mr. Rich was on the premises for only two or three hours each day and during all of that time he was engaged in packing and shipping his own flowers and for that purpose used the packing shed and equipment belonging to this defendant.

The office work in connection with the business after May 10th was performed by this affiant who made out all the invoices and shipping tickets, merely checking the same over with the receiver. Practically all of the correspondence was taken care of by this affiant personally and the time which Mr. Rich spent in the office was merely in looking over what this affiant had done.

While the shipments were completed by May 30th the collections dragged along for several weeks but after May 30th, Mr. Rich would only occasionally stop at the office for a few minutes to check over the invoices and receipts and take the remittances and deposit them in the bank to his account as receiver and all told, according to the account which this affiant kept of the time actually devoted to the business by the receiver, there was less than one hundred hours actually put in by Mr. Rich and that merely in a supervisory capacity as all of the work was done by this affiant and Mr. Hartung.

Mr. Rich's time was of no benefit to the business; he actually sold and marketed no flowers at all after May 10th since the markets were all arranged for before he took charge and he performed no useful services at all although his duties as receiver required him to see that this affiant and Mr. Hartung were accounting to him for the proceeds from the flowers.

Mr. Rich did not have the responsibility which is usually assumed by a receiver for the simple reason that he arranged with this affiant and Mr. Hartung to go ahead and handle the business as they would have done without his interference at all but he did devote less than one hundred hours of his time to watching the work.

During all of the time that he was so engaged he was taking care of his own business and would probably have spent just as much time on the premises in connection with his own business if he had not been acting as receiver at all since all of his flowers were cooled and packed along with those of the defendant although, of course, kept separate therefrom.

There is no possible justification for any such charge as \$300.00 for the services Mr. Rich performed. So far as value to the business is concerned they not only had no value but were actually a detriment; so far as compensation for the time put in and the responsibility assumed is concerned Mr. Hartung whose services were indispensable and really did the work and assumed the responsibility, received 50¢ per hour and such an allowance to Mr. Rich would be the absolute maximum that could be justified on any possible basis.

W. B. Burmister

Subscribed in my presence and sworn to before me this 17 day of April, 1934.

Samuel H. [illegible]
Notary Public.

