

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

THE WACHOVIA CORPORATION and
AMERICAN CREDIT CORPORATION,

Defendants

Civil Action No. 2656

Filed: 4/24/70

COMPLAINT

The United States of America, plaintiff, by its attorneys, brings this civil action against the defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this proceeding is instituted against the defendants named herein under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants of Section 7 of that Act, as amended (15 U.S.C. § 18).

2. Both defendants transact business and are found within the Western District of North Carolina.

II

DEFINITIONS

3. As used herein:

(a) "Retail automobile financing" means the making of direct loans to individuals for the purpose of purchasing an automobile

and the purchase on a discount basis from automobile dealers of contracts and security instruments arising from the sale by dealers of automobiles;

(b) "Credit life insurance" means insurance designed to protect the lender in the event of the death of the borrower before repayment of the loan;

(c) "Consumer loans" mean loans made under state Small Loan Acts by lenders licensed to transact this type of business;

(d) "Factoring" means the outright purchase of accounts receivable without recourse, the purchased accounts often providing a credit against which funds may be advanced at interest;

(e) "Floor plan financing" means loans to automobile dealers secured by the dealer's inventory of automobiles;

(f) "Leasing" means the leasing of vehicles, aircraft, and profit producing machinery and equipment and other capital goods.

III

THE DEFENDANTS

4. The Wachovia Corporation ("Wachovia") is made a defendant herein. It is a corporation organized and existing under the laws of North Carolina, with its principal place of business in Winston-Salem, North Carolina. As used herein, Wachovia includes all Wachovia subsidiaries.

5. American Credit Corporation ("American") is made a defendant herein. It is a corporation organized and existing under the laws of North Carolina, with its principal place of business in Charlotte, North Carolina. As used herein, American includes all American subsidiaries.

IV

TRADE AND COMMERCE

6. Wachovia has assets of approximately \$4 billion. Wachovia's principal subsidiary, wholly owned, is the Wachovia Bank and Trust Company, N.A. ("Wachovia Bank"), the largest commercial bank in the State of North Carolina and the thirty-ninth largest bank in the nation. Other Wachovia subsidiaries include Wachovia Courier Corporation, which provides courier service; Wachovia Insurance Agency, Inc., offering most types of insurance except life; Wachovia Mortgage Company, a mortgage loan originating and servicing firm; Wachovia Services, Inc., a company offering complete data processing services to correspondent banks and others; and North Carolina Title Company, a title insurance agency.

7. Wachovia Bank operates 130 banking offices in 43 cities and towns in the State of North Carolina. It presently has approval to open 10 additional branches and is seeking approval for 4 additional branches. Wachovia Bank, with deposits of \$1.3 billion as of December 31, 1968, holds about 21 percent of the deposits held by commercial banks in North Carolina; it held \$2 billion in trust assets in 1968, or 58 percent of all trust assets in North Carolina. Wachovia Bank ranks seventh of all commercial banks in the mortgage servicing field in the United States. As of

December 31, 1968, Wachovia Bank had approximately 28 percent of all commercial and industrial loans made by North Carolina banks.

8. Commercial banks, such as Wachovia Bank, perform an essential function in the nation's economy. Their principal services are holding monetary deposits, facilitating the transferability and liquidity of funds by providing such devices as checking accounts, and lending money to individuals and businesses. By making loans, commercial banks supply a significant part of the credit requirements of the nation's economy.

9. On the basis of 1968 figures, the three largest banks in North Carolina control 51.7 percent and the five largest banks control 67.4 percent of the deposits of all commercial banks in the State of North Carolina. In the seven largest metropolitan areas in North Carolina, the three largest banks control between 76.7 percent and 86.6 percent of the commercial bank deposits, and in five of these areas Wachovia Bank is the largest commercial bank.

10. American operates offices in 13 southeastern states. Ninety of those offices are located in the State of North Carolina. It operates through a network of subsidiaries, the principal of which are as follows:
Home Credit Companies, engaged in consumer lending;
American Credit Companies, sales finance companies;
Southeastern Financial Corporation, a factoring and commercial financing service; Twin States Insurance Company, Southeastern Fire Insurance Company and South State Insurance Company, which write property and casualty

insurance; Carolina Central Life Insurance Company, The Citadel Life Insurance Company and East Coast Life Insurance Company, which write life and related insurance services; and Carolina Fleets, Inc., a leasing company.

11. American has total assets of approximately \$400 million. Its net income for the year 1968 was approximately \$7 million. For the fiscal year ending August 31, 1969, American's volume of business was approximately \$160 million in consumer loans, \$456 million in factoring and commercial financing, \$12 million in leasing and \$179 million in sales finance. In 1969 American's life insurance subsidiaries received over \$8.5 million in premiums and its non-life insurance subsidiaries received over \$13 million in premiums.

12. There are 10 cities located throughout North Carolina in which Wachovia and American both have offices soliciting retail automobile loans. In these cities, Wachovia has a total of 86 offices and American has a total of 14 offices. At the end of 1968, approximately \$1.0 billion in retail automobile loans were outstanding in North Carolina. Of this amount, Wachovia, with \$124.5 million of such loans, held the second largest share or about 12 percent, and American, with \$46.7 million of such loans, held the seventh largest share or about 4.5 percent. Three companies accounted for about 42 percent of the retail automobile loans in the state in 1968. If the proposed merger is consummated Wachovia would account for over 16 percent of retail automobile loans outstanding in North Carolina, and three companies would account for about 46 percent of such loans.

13. Wachovia and American Credit compete in the sale of credit life insurance in North Carolina. In 1969, Wachovia

accounted for about 3 percent, and American accounted for 6.5 percent of the credit life insurance premiums written in North Carolina. If this merger were consummated, Wachovia would account for over 9 percent of the premiums from the sale of credit life insurance.

14. American is extensively engaged in making consumer loans. Consumer loans made in North Carolina in 1968 totalled about \$260 million. In 1968, American made consumer loans of \$34 million in North Carolina, which represented the largest share, or about 13.5 percent of all such loans made in North Carolina. In 1968, in each of six major metropolitan areas of the state where total consumer loans exceeded \$10 million, American had over 10 percent of such loans; in each of eight cities where total consumer loans range from \$3.5 million to \$10 million, American's share of such loans ranged from 10 to 20 percent; and in each of 20 smaller communities in the state where American has offices, its share of such loans ranged from 25 to 100 percent of consumer loans. Wachovia has offices in sixteen of the cities and towns in which American has consumer loan offices, including the six metropolitan areas in which American has 10 percent or more of consumer loans.

15. Factoring is one form of credit available to businesses. American is extensively engaged in factoring in North Carolina; about 70 percent of American's factoring volume is obtained from clients located in North Carolina. In 1968, American factored approximately \$186 million in accounts receivable in North Carolina, which represented the second largest share, or over 15 percent of the factoring market in that state. Two factors account for about 48 percent of factoring business in North Carolina, and three factors in that state account for about 56 percent of such business.

16. American is extensively engaged in leasing, with approximately \$20 million in leasing receivables outstanding in 1968.

17. Wachovia is a potential entrant into consumer lending and factoring. Wachovia has expressed an interest in providing these consumer services. It has the resources and capabilities to enter these markets independently or by merger with a less substantial competitor than American.

18. American competes with a substantial number of non-bank financial institutions which offer a variety of financial services in North Carolina. Such non-bank financial institutions, which require a large supply of funds to compete effectively, borrow extensively from banks. At year end 1968 Wachovia Bank accounted for approximately 35 percent of all loans to non-bank financial institutions made by commercial banks in North Carolina. The supply of funds for loans to non-bank financial institutions is limited.

19. "Tying" means a seller's refusal to sell a specific product or service, the tying product, unless the purchaser also agrees to purchase another product, the tied product.

"Tying effect" means the tendency of a firm seeking to purchase a desired product from a particular company to purchase one or more other products from that company.

There are a number of markets in which the relationship between Wachovia and American is likely to give rise to significant opportunity for tying or tying effects.

20. As of December 31, 1968, Wachovia accounted for 28 percent of all commercial and industrial loans made by

banks located in North Carolina. The supply of funds for commercial and industrial loans is limited. Many of these borrowers are actual or potential customers for factoring or leasing services.

21. Wachovia has a substantial number of loans outstanding to retail businesses. The supply of funds for loans to retail businesses is limited. The customers of such retail businesses often require consumer loans to make purchases from such businesses. Such retail businesses often arrange for consumer financing for its customers.

22. Customers of Wachovia and American have regularly utilized interstate communications, including mails, telephone, and telegraph, to carry on their business with, apply for, and obtain the services provided by these companies. American and Wachovia have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with customers and with other financial institutions located in states other than North Carolina and transact business with customers located in states other than North Carolina. Both defendants are engaged in interstate commerce.

V

OFFENSE CHARGED

23. On March 26, 1970, the stockholders of Wachovia and American ratified an agreement entered into between the corporations whereby Wachovia is to acquire all of the stock of American. The acquisition is to be consummated on April 27, 1970, or shortly thereafter.

24. The effect of the acquisition of American by Wachovia may be to substantially lessen competition or to

tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

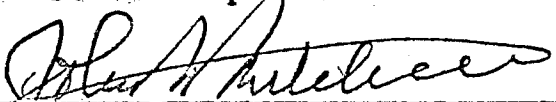
- (a) actual and potential competition between American and Wachovia in retail automobile financing, other types of financing, and the sale of credit life insurance in North Carolina and other sections of the country within North Carolina will be eliminated;
- (b) actual and potential competition in retail automobile financing, other types of financing, and the sale of credit life insurance in North Carolina and other sections of the country within North Carolina may be substantially reduced;
- (c) Wachovia will be eliminated as a potential entrant into consumer lending and factoring and the probability of deconcentration of these lines of commerce in North Carolina and other sections of the country will be substantially reduced;
- (d) existing competition between American and other non-bank financial institutions in North Carolina may be substantially lessened;
- (e) the power of Wachovia and American to employ tying and their ability to benefit from tying effects in various financial services may be substantially enhanced, and the markets available to their competitors may be correspondingly narrowed;
- (f) the likelihood of similar mergers between banks and other financial institutions will be greatly enhanced, thereby (i) increasing

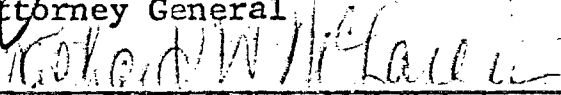
the barriers to entry and concentration in various financial markets in North Carolina and other sections of the country, and (ii) reducing the number of firms with the capability and incentive for competitive innovation in providing various types of financial services.

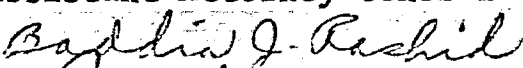
PRAYER

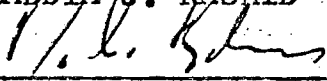
WHEREFORE, plaintiff prays:

1. That the agreement of Wachovia to acquire the stock of American be adjudged in violation of Section 7 of the Clayton Act.
2. That Wachovia and American be permanently enjoined from effectuating said agreement.
3. That a preliminary injunction be issued preventing and restraining Wachovia and American from taking any action in furtherance of the acquisition agreement described in paragraph 23 of this complaint, or any similar agreement or plan, pending final adjudication of the merits of this complaint.
4. That plaintiff have such other and further relief as the Court may deem just and proper.
5. That plaintiff recover the costs of this action.


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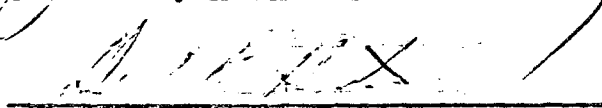

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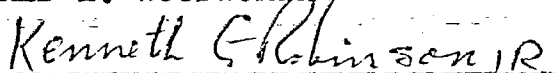
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