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Petition.

PETITION.

In Chancery of New Jersey

Between

ANNETT - MAHNKEN REALTY COMPANY, a corporation of New Jersey, <i>Complainant,</i> <i>and</i> BETSEY GOLLIN, <i>et als.</i> , <i>Defendants.</i>	}	10 <i>On Bill to Foreclose. Petition.</i>
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To the Honorable Edwin Robert Walker, Chan- 20
cellor of the State of New Jersey:

The petition of Betsey Gollin and Max Gollin,
her husband, two of the defendants in the fore-
going suit, respectfully shows unto your Honor:

1. Sometime during the year 1923 one, Irving
Gollin, son of your petitioners, was the owner
of a tract of land at the northeast corner of
Hudson Boulevard and West 34th street, in the
City of Bayonne, County of Hudson and State 30
of New Jersey, and more particularly described
as the first tract set out in paragraph 3 of the
complainant's bill of complaint filed in this
cause and know as premises 880 Boulevard,
Bayonne, and that the said Irving Gollin was
erecting and constructing upon the said tract of
land a thirty-two-family apartment dwelling
house.

2. That your petitioner, Betsey Gollin, at 40
that time was the owner in her own name of two

Petition.

10 other tracts of land in the City of Bayonne, County of Hudson and State of New Jersey, one situate at the northwest corner of Broadway and West 10th street and described as the second tract of land in the complainant's bill of complaint and known as premises 249 Broadway, Bayonne, and the other situate on the westerly side of the Boulevard between West 19th street and Bayonne City Park and described as the third tract of land in the complainant's bill of complaint and known as premises 501 Boulevard, Bayonne.

20 3. In or about the month of July or August, 1923, said Irving Gollin was in need of moneys to aid him in the completion of the said apartment house and applied to the Kay-Bee Investment Co. for an advance on its construction loan to which he was not entitled, and the Kay-Bee Investment Co. refused to advance such moneys. Thereupon an agreement was entered into with the Kay-Bee Investment Co. whereby said Irving Gollin executed and delivered to the said Betsey Gollin his deed conveying the premises at the northeast corner of the Boulevard and 34th street, and known as 880 Boulevard, Bayonne, to said Betsey Gollin and thereupon the Kay-
30 Bee Investment Co. advanced to Betsey Gollin additional moneys which said Betsey Gollin turned over to Irving Gollin for the purpose of enabling him to complete the construction of said building.

40 4. Thereafter in December, 1923, said Betsey Gollin borrowed from the Kay-Bee Investment Co. an additional sum of eleven thousand dollars and executed to the said Kay-Bee Investment Co. her bond and mortgage with the defendant,

Petition.

Max Gollin, her husband, joining in the mortgage. Said mortgage was recorded in the office of the Register of Hudson County as mentioned in the bill of complaint herein.

5. Thereafter said Betsey Gollin borrowed from the said Kay-Bee Investment Co. an additional sum of four thousand dollars and on January 7, 1924, executed and delivered to the said Kay-Bee Investment Co. her bond and mortgage with Max Gollin, her husband, joining in the mortgage on premises described as tract number three in the bill of complaint herein and known as premises 501 Boulevard, Bayonne. 10

6. Thereafter said Irving Gollin continued to complete the erection of the said building and during the course of completion incurred debts in the sum of one hundred and sixty-two thousand dollars, all of which included the construction loan of sixty-five thousand dollars, the additional two loans above mentioned herein, eleven thousand dollars and four thousand dollars, and a number of personal loans from other persons and moneys due to laborers and materialmen. 20

7. In or about February, 1924, Betsey Gollin, on behalf of Irving Gollin, who was the equitable owner of the property, obtained from the Colonial Life Insurance Company a first mortgage loan on the premises at the northeast corner of the Boulevard and 34th street and known as premises 880 Boulevard, in the sum of one hundred thousand dollars, and said Betsey Gollin executed and delivered her bond and mortgage with Max Gollin, her husband, joining, to secure the payment of such sum and out of the proceeds of said mortgage, said Betsey Gollin 30 40

Petition.

caused to be paid all liens then existing against the premises except the two mortgages above recited held by the Kay-Bee Investment Co., the first in the sum of eleven thousand dollars and the second in the sum of four thousand dollars, which by agreement with the Kay-Bee Investment Co. were subordinated to the lien of the
10 said Colonial Life Insurance Company's first mortgage, and became second and third mortgages at the premises at the northeast corner of the Boulevard and 34th street and known as premises 880 Boulevard, Bayonne, and were also liens against the other properties described in the bill of complaint.

6. In November, 1923, Max Gollin applied to one, John L. Dalrymple, for a loan of three
20 thousand dollars in order to enable said Irving Gollin to complete the building, and said John L. Dalrymple agreed to lend the said Max Gollin the said sum of three thousand dollars if the said Max Gollin would give him as security a mortgage on certain other property owned by Betsey Gollin and described as premises number 772 Avenue C, in the City of Bayonne, which was the residence of Max Gollin and Betsey
30 Gollin, and thereupon Betsey Gollin with her husband executed and delivered to John L. Dalrymple their bond and mortgage for three thousand dollars and received the money which was given to Irving Gollin for the purpose of enabling him to complete the building.

9. On June 11, 1923, Betsey Gollin borrowed from one, Lillian Markowitz, thirty-two hundred dollars, which was given to Irving Gollin for the purpose of enabling him to complete the
40 building, and as security for said thirty-two

Petition.

hundred dollars, executed and delivered to said Lillian Markowitz her bond and mortgage on premises known as 499 Boulevard, in the City of Bayonne, Hudson County, New Jersey, then owned by the said Betsey Gollin.

10. Sometime in February, 1924, the creditors of Irving Gollin began to press him for payment of their debts, and Irving Gollin and your petitioners being unable to pay the same, applied to said Horace Roberson for a loan of sufficient moneys to pay the creditors of said Irving Gollin and offered to give to said Horace Roberson a mortgage on the premises first described in the bill of complaint herein and situate at the northeast corner of the Boulevard and 34th street and known as 880 Boulevard, Bayonne, but said Horace Roberson refused to accept a mortgage on said premises and to lend the money, but agreed with your petitioners that he would accept from your petitioners a deed conveying to him the premises known as 880 Boulevard and hold the same in trust for your petitioners and receive and collect the rents, issues and profits thereof, and after the payment of all carrying charges thereon to apply any balance remaining in his hands to the payment of all of the encumbrances and debts then existing against the said premises, and said Horace Roberson further agreed that he should endeavor to effect settlements with the creditors of said Irving Gollin, and if necessary advance out of his own moneys such sums as might be required for the purpose of making such settlements, and that upon the repayment to him of the moneys so advanced, together with interest and compensation for his services, he would return to your petitioners the premises

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Petition.

so conveyed to him. Said Horace Roberson further demanded of your petitioners an absolute deed of conveyance so that he might without the consent of your petitioners sell the said premises as in his discretion he might deem best and apply the proceeds of such sale as above set forth, and said Horace Roberson further
10 agreed that he would account to your petitioners regularly for all of the receipts of the said premises together with his disbursements thereon.

11. Pursuant to said agreement with said Horace Roberson, your petitioners agreed to execute and deliver to the said Horace Roberson a deed conveying the premises as above set forth, upon the terms and conditions above recited, and with the request of said Horace Roberson, did execute and deliver their deed conveying the said premises to the Annett-Mahnken Realty Company, who was the nominee of the said Horace Roberson, and the said Annett-Mahnken Realty Company, the complainant herein, did thereupon execute and deliver to your petitioners an agreement in writing, a copy of which is hereto annexed, specifically setting forth the terms and conditions of the agreement
20 so made by your petitioners with the said Horace Roberson. Said agreement further provided that the said complainant agreed that it would not do, or suffer or permit any act, deed, matter or thing, whereby the said premises could, should or might be in anywise impaired, destroyed or injured in title, interest, estate or otherwise, excepting as might be necessary to carry out and fulfil the conditions of said trust.
30

12. Your petitioners further show that the
40 said Horace Roberson took possession of the

Petition.

premises on May 16, 1924, and from that time on has had absolute possession and control of said premises and has received and collected all of the rents, issues and profits thereof, and has enjoyed the said premises to the fullest extent as if the same were his absolute property, and has failed to render unto your petitioners any account of his trust, and has failed to pay and discharge all of the encumbrances against the said premises as he had agreed to do, but instead of paying and discharging the said encumbrances, has purchased all outstanding mortgages and liens and now holds the same to his own use. 10

13. Your petitioners further show that the said Horace Roberson has purchased or caused to be purchased in the name of the complainant herein the mortgage made by your petitioners to John L. Dalrymple and that he is now the owner thereof; that he has purchased the mortgage made by your petitioners to Lillian Markowitz and that he is now the owner thereof; that he has purchased from the Kay-Bee Investment Co. the two mortgages above set forth and is now the owner thereof; that he has purchased from James Brady's Sons Co. the certain judgment described in the bill of complaint and is now the owner thereof; and that he has purchased a number of other claims against the said Irving Gollin and is now the owner thereof, but that he has failed in all respects to account to your petitioners in any way for the purchase of the said encumbrances and that he has failed to give your petitioners the benefit of such purchase, and that he had failed to discharge the same of record as he had agreed to do. 20 30 40

Petition.

14. Your petitioners further show that, contrary to his agreement and for the purpose of cheating and defrauding your petitioners, the said Horace Roberson has caused to be instituted three suits in foreclosure in the Court of Chancery of New Jersey, the first suit under the mortgages given by your petitioners to the Kay-Bee Investment Co., the second suit for the foreclosure of the mortgage given by your petitioners to Lillian Markowitz and the third suit for the foreclosure of the mortgage given by your petitioners to John L. Dalrymple.

15. Your petitioners further show that immediately upon the service upon them of the subpoena in each of said suits, your petitioners retained the firm of Dembe & Dembe of the City of Bayonne to represent them and that they were led to believe that their interests were being protected, but learned later on that no answer had been filed for them or on their behalf, and that a decree in foreclosure had been entered and that a writ of fi. fa. had been issued to the sheriff of Hudson County and that the said premises were then being advertised for sale.

16. Thereupon your petitioners immediately retained George E. Cutley, Esquire, counsellor at law of this State, and that said George E. Cutley informed your petitioners that he was taking care of the matter and would endeavor to have the decrees of foreclosure set aside and opened, and your petitioners are now informed that no action has been taken by the said George E. Cutley and that the sheriff will on April 8th sell the said premises at public auction.

17. Your petitioners further show that the premises at the northwest corner of the Boule-

Petition.

vard and 34th street and known as 880 Boulevard, Bayonne, were reasonably worth the sum of one hundred and sixty-five thousand dollars at the time of the execution of the deed to the said Annett-Mahnken Realty Company and that sufficient moneys could have been raised by a sale of the said premises to pay all of the obligations and encumbrances of your petitioners and Irving Gollin, and that your petitioner Betsey Gollin could have saved herself the premises known as 249 Broadway, 501 Boulevard, 772 Avenue C and 880 Boulevard, Bayonne, if the said Horace Roberson had properly executed the trust reposed in him.

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18. Your petitioners further show unto your Honor that they are illiterate persons, absolutely ignorant in the English language and can neither read nor write and that the paper writing annexed to this petition and given to them by said Horace Roberson was represented to them as is particularly set forth in this petition, and that they did not have the benefit of independent advice before accepting the same and executing the deed to the said Annett-Mahnken Realty Company.

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Wherefore your petitioners respectfully pray that your Honor will make an order opening, vacating and setting aside the decrees entered in all three foreclosure suits and restrain and enjoin the sheriff from exposing the said premises for sale until the further order of this Court in the premises and for an order permitting your petitioners to interpose an answer in all three foreclosure suits and for such other and further relief in the premises as to your Honor shall seem meet.

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Petition.

And your petitioners will ever pray, etc.

BETSEY GOLLIN,
MAX GOLLIN,
Petitioners.

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STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

BETSEY GOLLIN, of full age, being duly sworn, on her oath deposes and says: That she is one of the defendants in the above-entitled cause, and is one of the petitioners in the foregoing petition named; that she has had read to her and has heard fully and particularly all of the contents of the foregoing petition, and the same are true.

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BETSEY GOLLIN.

Sworn and subscribed to before me
this 8th day of April, 1926.

ANN FEDER,
Notary Public of New Jersey.

30

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

MAX GOLLIN, of full age, being duly sworn, on his oath deposes and says: That he is one of the defendants in the above-entitled cause, and is one of the petitioners in the foregoing petition named; that he has had read to him and has heard fully and particularly all of the contents of the foregoing petition, and the same are true.

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MAX GOLLIN.

Petition—Trust Agreement.

Sworn and subscribed to before me
this 8th day of April, 1926.

ANN FEDER,
Notary Public of New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss. 10

IRVING GOLLIN, of full age, being duly sworn,
on his oath deposes and says: That he is the
Irving Gollin mentioned in the foregoing peti-
tion, and that he has read the same fully and
particularly, and the same is true.

IRVING GOLLIN.

Sworn and subscribed to before me
this 8th day of April, 1926. 20

ANN FEDER,
Notary Public of New Jersey.

Copy of Trust Agreement.

TO ALL TO WHOM THESE PRESENTS
SHALL COME, the Annett-Mahnken Realty 30
Company, a corporation of State of New
Jersey, sends GREETINGS:

WHEREAS—on May 16th, 1924, Betsey Gol-
lin and Max Gollin, her husband, in considera-
tion of One dollar and other valuable considera-
tion to them in hand paid, by deed under their
hand and seal, did grant and convey in fee unto
said Annett Mahnken Realty Company, all that
certain tract, piece or parcel of land and prem-
ises, situate, lying and being in the City of Bay- 40

Petition—Trust Agreement.

onne, in the County of Hudson and State of New Jersey, described as follows:—Beginning at the intersection of the northerly line of West 34th Street, with the easterly line of the Hudson County Boulevard; thence running (1) easterly along the northerly side of West 34th Street (82.5) feet; thence (2) Northerly and parallel with the Hudson County Boulevard (87.5) feet; thence (3) westerly and parallel with West 34th Street (82.5) feet to the easterly side of the Hudson County Boulevard; thence (4) southerly along the same (87.5) feet to the point or place of beginning.

NOW KNOW YE, that the said Annett Mahken Realty Company does in consideration of the sum of One dollar to it paid by the said Betsey Gollin, hereby make known, admit and declare that said premises were so conveyed to it, and that it now holds and will continue to hold the same in trust for the use and benefit of the said Betsy Gollin, her heirs and assigns and for the several creditors of said Betsy Gollin and one Irving Gollin for the furnishing and of labor and materials for the construction and erection of the four story brick apartment house building erected upon the above described lands, and said Company does for itself, its successors and assigns covenant and agree to and with the said Betsey Gollin or her heirs and assigns that said Company will at all times hereafter hold said herein described lands and premises upon the following trusts, and not otherwise, that is to say:—

FIRST:—

To collect the rents, issues and profits thereof from the several tenants which occupy apartments in said building.

*Petition—Trust Agreement.**SECOND:*

To pay out of said rents and profits, the interest due upon the mortgages that are liens upon said premises; to pay taxes, water rents, insurance premiums and for the necessary repairs and other expenses that are proper and incident to the management of said building. 10

THIRD:

To endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sum or sums of money as may be necessary for the settlement of all such claims.

FOURTH:

That in order to raise moneys sufficient for the settlement of said claims, if a satisfactory price is offered, to sell and convey said premises without the written consent of the said Betsey Gollin, but to render to said Betsey Gollin a just and true account of all moneys received from the sale of said premises and all expenditures. That it has been agreed between the parties hereto that said Annett Mahnken Realty Company is to receive a commission of five per cent. (5%) for the collection of said rents; that said Company is to receive a just and reasonable compensation for procuring loans for all moneys advanced in the settlement of said claims and is to receive lawful interest upon all moneys invested in said property. To pay all other legal and necessary expenses that may become necessary in the management of said property, and also to receive such compensation as may be mutually agreed upon hereafter between the parties hereto and if they fail to agree, to receive such compensation as the Chan- 20
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Petition—Trust Agreement.

cellor or any of the Vice Chancellors upon proper issue framed in the Court of Chancery allows to said Company for its services in the capacity as trustee.

FIFTH:

10 That after said premises have been freed from all of said debts and claims, and said Company has received its just compensation for the management thereof, to sell and convey said lands and premises to such person or persons as said Betsy Gollin may require by writing, free and clear and discharged of and from all and every encumbrance thereon by said Company or its successors or assigns, except such as may be necessary to pay said claims.

20 And it does further for itself, its successors and assigns covenant and agree to and with the said Betsey Gollin or her heirs, devisees, executors, administrators and assigns that said Company shall not do, or suffer or permit any act, deed, matter or thing, whereby said premises, can, shall or may be in anywise impaired, destroyed or injured in title, interest, estate or otherwise, excepting as may be necessary to carry out and fulfill the conditions of this trust.

30 In witness whereof, the said Annett Mahnken Realty Company has caused its corporate seal to be hereto affixed and attested by its Secretary and these presents to be signed by its President, this day of May, nineteen hundred and twenty-four.

ANNETT MAHNKEN REALTY COMPANY,
a corporation of New Jersey:

By: CHAS. E. ANNETT, Pres.

Attest:—

40 Mary E. Annett, Sec.

Affidavit of Max Gollin.

Affidavit of Max Gollin.

IN CHANCERY OF NEW JERSEY.

Between

ANNETT - MAHNKEN REALTY
COMPANY, a corporation of
New Jersey,

Complainant,

and

BETSEY GOLLIN, *et als,*
Defendants.

*On Bill to
Foreclose.*

*Affidavit of
Max Gollin.*

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STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } *ss.*

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MAX GOLLIN, of full age, being duly sworn according to law, on his oath deposes and says:

During the year 1923, my son, Irving Gollin, purchased a tract of land at the Hudson County Boulevard and West 34th street, in the City of Bayonne, New Jersey, more particularly described as the First Tract set out in paragraph 3 of the complainant's bill of complaint and known as premises 880 Boulevard, Bayonne, N. J., upon which Irving Gollin planned to erect a thirty-two family apartment dwelling house.

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At the same time, my wife, Betsy Gollin, was the owner of five other tracts of land in the City of Bayonne and known respectively as #249 Broadway, #501 Boulevard, #499 Boulevard, #772 Avenue C and #462 Avenue C.

In June, 1923, my son required some additional moneys for the purpose of taking the title to the land and for the purpose of enabling

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Affidavit of Max Gollin.

10 him to build the building and my wife arranged with one, Lillian Markowitz, to borrow from said Lillian Markowitz, through an attorney by the name of Israel Lipshitz, the sum of \$3,200.00 and to give her as security, a mortgage on premises #499 Boulevard, Bayonne, N. J. After receiving the said moneys and paying the costs of examining the title, my wife turned the balance over to my son, who used the same for the purpose of taking the title and for the commencement of the erection of the building.

20 In June, 1923, my son arranged with the Kay-Bee Investment Co. for a construction loan of \$70,000 and executed and delivered to the Kay-Bee Investment Co. a mortgage on the premises for that amount, which mortgage was to be used for the purpose of erecting the building and which mortgage provided for the payment of certain sums of money during the course of the said construction.

30 In November of 1923, one of the creditors of my son, Springstead Supply Co., placed with Horace Roberson, a claim against my son for bricks sold to him in the erection of the said building, for the sum of approximately \$1,800.00 and my son requested that I go to Horace Roberson and see if I could make some arrangement about the payment of this money. I went to see Mr. Roberson and I asked him if he would lend me \$3,000 on a mortgage on premises #772 Avenue C so that my son would be able to pay the Springstead Supply Co. and so that he would have some more moneys to pay off other creditors. Mr. Roberson agreed to give me the moneys and thereupon my wife made a mortgage on premises at #772 Avenue C to John L. Dalrymple for \$3,000.00, and Mr. Roberson deducted the Springstead
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Affidavit of Max Gollin.

Supply Co. claim and gave me the balance, less his charges for searching the title, and I gave that balance to my son who used it in the erection of the building.

In December, 1923, my son required more moneys and my wife then arranged with the Kay-Bee Investment Co. to borrow \$11,000.00 and to give as security, a mortgage on the apartment house which my son was then erecting and which had been transferred to my wife, and also two other parcels at #249 Broadway and #501 Boulevard, Bayonne, N. J. This money was turned over to my son who used the same in the erection of the building. 10

In January, 1924, my son again required more moneys and my wife again arranged to borrow from the Kay-Bee Investment Co. the sum of \$4,000.00 and to give them as security another mortgage on the same three parcels of property. The proceeds of this mortgage were given to my son for the erection of the building. 20

In February, 1924, my son arranged to borrow \$100,000.00 from the Colonial Life Insurance Company and to give them a first mortgage on the apartment house. Out of the proceeds of these moneys, he paid the first construction loan of \$70,000.00 with interest and costs, the land mortgage of \$16,000, the architect's fees for the Colonial Life Insurance Company of \$1,500.00, the Baldwin Lumber Co. and Junction Milling Co. for approximately \$5,500.00, the New Jersey Title Guarantee & Trust Co. the sum of \$750.00, the Colonial Life Insurance Company the sum of \$500.00, The First National Bank of Jersey City the sum of \$3,500.00; and the second and third mortgages of \$11,000.00 and \$4,000.00 held by the Kay-Bee Investment Co. were subordinated 30 40

Affidavit of Max Gollin.

to that lien of the Colonial Life Insurance Company mortgage.

10 Shortly thereafter I went to see Mr. Roberson and asked Mr. Roberson if he would lend \$50,000.00 on a second mortgage on the apartment house which my son had just completed and Mr. Roberson said that he would not lend the money on a second mortgage, but that he would consider the matter and let me know what he could do. Within a few days Mr. Roberson advised me that he would accept a clear deed to the apartment house and that he would hold and manage the property and that he would attempt to make a settlement with all of the creditors and if he could make any settlement, he would advance enough moneys to do so and that he would hold the property until he could get a buyer and if he
20 sold the property, then out of the moneys which he would receive, he would pay himself all of the moneys which he so advanced and he would pay over whatever was left to my son. He insisted upon a clear deed to the property without any right on my wife's part to prevent him from selling at any time that he might choose. I conferred with my wife and son, and my wife agreed to give him such a deed. I thereupon notified Mr.
30 Roberson and he told me to bring to him a complete list of all persons to whom there was due any moneys on this building. My son prepared that list and I took it to Mr. Roberson. Mr. Roberson then prepared the deed and my son got the deed from him and brought it to my home and my wife and I executed the same before Israel Lipshitz, and Mr. Lipshitz signed the acknowledgment and my son delivered the deed to Mr. Roberson. Within a few days thereafter, I saw Mr. Roberson and told him that my
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Affidavit of Max Gollin.

son insisted upon a Trust Agreement to protect our interests in that building. Mr. Roberson told me that he would prepare such an agreement and within a few days he told me that it was ready and I took my wife to his office and there Mr. Roberson read to us the agreement annexed to the petition. Mr. Roberson read this agreement to us and I and my wife asked him if he would clear all of the debts and all of the mortgages on the other properties and the Brady judgment, and he said that he would, and that this agreement contained such a provision. We thereupon signed the agreement. Mr. Roberson told us at that time that he and Mr. Annett would advance the moneys necessary to pay all of the claims against this building. 10

On May 16, 1924, said Horace Roberson took possession of said premises and from that time on has had absolute possession and control thereof and has received and collected all of the rents, issues and profits and has enjoyed the said premises to the fullest extent as if the same were his absolute property and has failed to render to us any account of his trust and has failed to discharge any of the mortgages against the other properties as he had agreed to do, but on the contrary, he has paid the mortgages existing against the other properties and instead of discharging the same has taken an assignment of all of said mortgages as well as the Brady judgment above mentioned, and now holds the same to his own use. 20 30

At the time that I asked Mr. Roberson to take a second mortgage of \$50,000.00, I informed Mr. Roberson that my son had received an offer to purchase this property by William N. Hutchinson for \$168,000.00, but that my son had refused 40

Affidavit of Max Gollin.

to sell because there would be nothing left for him after the payment of commissions.

I am informed that Mr. Roberson has paid all of the persons who had claims against the said building, but he has never given me any statement of the amount which he has expended
10 in making such payments.

Said Horace Roberson has caused to be instituted in this Court three suits in foreclosure; the first suit under the two mortgages given by my wife to the Kay-Bee Investment Co., the second suit under the mortgage given by my wife to Lillian Markowitz and the third suit under the mortgage given to John L. Dalrymple.

The Markowitz mortgage was assigned to Horace Roberson and by Horace Roberson to the complainant; the Dalrymple mortgage was assigned to Myrtle A. Reid and by said Myrtle A. Reid to the complainant; the Kay-Bee Investment Co. mortgages were assigned to Mildred J. Smith and by Mildred J. Smith to the complainant and the Brady judgment was assigned to Mildred J. Smith, who now holds the same.
20 Deponent avers that Myrtle A. Reid and Mildred J. Smith are persons acting in behalf of the complainant and Horace Roberson.

30 When the subpoena in these several causes were served upon us, I went to see Mr. Dembe and he told me that it would be necessary to file an Answer. I asked Mr. Dembe to file an Answer and left the papers with him. I did not do anything further in the matter until about two weeks later when my wife received a letter from Mr. Dembe to call at his office. My wife called there and Mr. Dembe gave her back the papers and we thought that the matter was being taken
40 care of, but we later learned that no Answer

Affidavit of Max Gollin.

had been filed and that a Decree in foreclosure had been entered and that the sheriff had advertised the property for sale. When we learned that the property was about to be sold, we retained George E. Cutley and Mr. Cutley informed us that he would take care of the matter and endeavor to have the decrees in foreclosure opened, but are now informed that Mr. Cutley took no action in that behalf and the only thing that Mr. Cutley did, was to adjourn the sale from week to week until April 8, 1926. We learned from Mr. Cutley on April 7th, that he had not taken any steps to open the Decrees and we then retained Messrs. Heyman & Heyman to take such action in the matter. 10

I am not well versed in the English language and I do not understand the intricate legal phraseology such as is employed by Mr. Rober- son and did not understand the contents of the agreement which he had prepared and which he read to us at the time of the signing of that agreement in his office. 20

MAX GOLLIN.

Sworn to and subscribed before me
this 14th day of April, 1926.

JOHN FLANIGAN,
Master in Chancery of New Jersey. 30

*Affidavit of Betsey Gollin.***Affidavit of Betsey Gollin.**

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. }*ss.*

Betsey Gollin, of full age, being duly sworn according to law, on her oath deposes and says:
 10 I am one of the defendants in the above-entitled suit and in the other two suits brought by the same complainant and I am the owner of six parcels of real estate in the City of Bayonne. They are as follows: #880 Boulevard, #249 Broadway, #501 Boulevard, #499 Boulevard, #772 Avenue C and #462 Avenue C. The premises at #880 Boulevard were conveyed to me by my son, Irving Gollin, in or about July or August of 1923 as will hereafter appear.

20 Sometime in 1923, my son bought the premises at #880 Boulevard and intended to erect an apartment house thereon. At the time that it became necessary to take the title, my son did not have sufficient moneys and I then borrowed from Lillian Markowitz, through Israel Lipshitz, who was her attorney, the sum of \$3,200.00 and gave her a mortgage on property which I owned at #499 Boulevard, Bayonne, N. J. The proceeds of this mortgage I turned over to my son,
 30 who used them for the purpose of taking the title and for the purpose of commencing the excavation of the plot and for the foundation of the building. My son had arranged with the Kay-Bee Investment Co. to borrow \$70,000.00 on a construction loan on the apartment house and my son informed me that the \$70,000.00 would be given to him as the building progressed.

In July or August of 1923, my son informed me that he needed some moneys and that the
 40 Kay-Bee Investment Co. would not advance any

Affidavit of Betsey Gollin.

because he was not entitled to them in accordance with the progress of the building, but that if a deed were given to me for the property, they would advance to me the moneys under this mortgage, regardless of whether or not the building warranted the same. My son then conveyed the property to me and the Kay-Bee Investment Co. advanced the moneys to me and I turned same over to my son for use in the erection of the building. 10

In December, 1923, my son required more moneys and I borrowed from the Kay-Bee Investment Co. \$11,000.00 and gave them a mortgage on the apartment house and two other houses, one at #249 Broadway and the other at #501 Boulevard. This money I also turned over to my son. 20

In January, 1924, I borrowed \$4,000 from the KayBee Investment Co. and gave them another mortgage covering the same premises and again I turned this money over to my son for the apartment house building. 20

My son then arranged for a first mortgage of \$100,000.00 with the Colonial Life Insurance Company and I signed the bond and mortgage to the Colonial Life Insurance Company and the same were disbursed for liens against the building, then existing. 30

In November, 1923, I borrowed from Horace Roberson the sum of \$3,000 and executed my mortgage to one, John L. Dalrymple, on premises #772 Avenue C.

After the Colonial Life Insurance Company mortgage had been placed, my husband told me that he had asked Mr. Roberson to lend \$50,000.00 on a second mortgage on the apartment house, but that Mr. Roberson had refused to 40

Affidavit of Betsey Gollin.

take a mortgage, but that he would consider
some way to help us out, and a few days later
my husband told me that Mr. Roberson had
said that if I would execute a clear deed to the
property to him, giving him the ownership of
that property so that he might collect the rents,
10 he would hold the property and manage it for
us and that he would then attempt to settle the
claims of the creditors and would advance his
own moneys to that end, so that we might have
the advantage of such settlements and that he
would attempt to sell the property, and if he
sold it, that he would pay himself all of the
moneys so advanced, together with his interest
and charges thereon, and if any moneys were
left he would return them to us. I asked my
husband if that meant that Mr. Roberson would
20 clear my other properties and he told me that
it did and I thereupon agreed to do it. Shortly
thereafter I signed a deed conveying the prop-
erty to Mr. Roberson. Within a few days there-
after, my son insisted upon having a writing
from Mr. Roberson to protect our interests, and
I went with my husband to Mr. Roberson and he
prepared such an agreement. I asked Mr. Rob-
erson if that agreement said that he would clear
30 all of the debts on my other properties and
the Brady judgment and Mr. Roberson told me
that it did, and I thereupon signed the agree-
ment. I can neither read nor write the English
language, and I asked my husband if that agree-
ment said that Mr. Roberson would clear all of
my debts on my other properties and the Brady
judgment and my husband asked Mr. Roberson
the same question and received the same answer.
We thereupon signed the agreement. Mr. Rober-
son immediately took possession of the property,
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Affidavit of Betsey Gollin.

which was about May 16, 1924, and has had the absolute possession thereof since that time and has collected all of the rents, issues and profits and has enjoyed the premises to the fullest extent, and has failed to render unto me any account of his trust, and he has failed to pay and discharge the mortgage against my other properties and the Brady judgment, but, on the contrary, he has paid and taken by assignment all of the mortgages against my other properties and the Brady judgment. 10

The Markowitz mortgage was assigned to Horace Roberson and by Horace Roberson to the complainant; the Dalrymple mortgage was assigned to Myrtle A. Reid and by said Myrtle A. Reid to the complainant; the Kay-Bee Investment Co. mortgages were assigned to Mildred J. Smith and by Mildred J. Smith to the complainant, and the Brady judgment was assigned to Mildred J. Smith, who now holds the same. Deponent avers that Myrtle A. Reid and Mildred J. Smith are persons acting in behalf of the complainant and Horace Roberson. 20

Mr. Roberson has failed to give me the benefit of any settlement which he has made, if any, but, on the contrary, has caused three foreclosure suits to be brought against me; one under the two Kay-Bee Investment Co. mortgages, one under the Markowitz mortgage and one under the Dalrymple mortgage. 30

My husband took the subpoena to Mr. Dembe and in about two weeks I received a letter to call at Mr. Dembe's office. I went to Mr. Dembe and he gave me back the papers. I did not know that no answer had been filed and I did not do anything further in the matter until I was informed that the property was advertised for 40

Affidavit of Irving Gollin.

10 sale. We then went to Mr. Cutley, who told us that he would take care of the matter, and on April 7th we were informed that nothing had been done and that no further adjournments of sale could be had, and we immediately went to Messrs. Heyman & Heyman and placed the matter in their hands.

BETSEY GOLLIN.

Sworn to and subscribed before me
this 14th day of April, 1926.

JOHN FLANIGAN,
Master in Chancery of New Jersey.

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Affidavit of Irving Gollin.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

IRVING GOLLIN, of full age, being duly sworn according to law, on his oath deposes and says: I am the son of Max and Betsey Gollin. I purchased a tract of land at 34th street and the Boulevard in Bayonne, upon which I intended to erect an apartment house.

30 In June, 1923, my mother borrowed the sum of \$3,200.00 from Lillian Markowitz and gave her bond and mortgage on premises #499 Boulevard, and turned over the money to me. With this money I took the title and commenced the excavation and the foundation of the building.

40 In June, 1923, I arranged with the Kay-Bee Investment Co. for a construction mortgage loan of \$70,000.00. This mortgage provided for the payment of moneys at various stages of the construction of the building.

Affidavit of Irving Gollin.

In July or August of that year, I was unable to continue with the building and asked the Kay-Bee Investment Co. to advance moneys in advance of the times when I was entitled to receive them and they refused to do so. I was told, however, that if I would convey the title to my mother, her credit would enable the Kay-Bee Investment Co. to make such advance, and I did thereupon convey the property to my mother and she received from the Kay-Bee Investment Co. the advances so made and turned them over to me and I used them in the erection of the building. 10

In November, 1923, I owed the Springstead Supply Co. about \$1,800.00 for bricks, and Horace Roberson wrote me a letter that he had received the claim for collection. My father went to Mr. Roberson and arranged with Mr. Roberson to borrow the sum of \$3,000.00 on the property owned by my mother at #772 Avenue C, and she gave him a mortgage in the name of John L. Dalrymple for that amount. 20

In December, 1923, I caused my mother to borrow from the Kay-Bee Investment Co. the sum of \$11,000.00 and to give her bond secured by a mortgage covering three parcels of property, namely, #880 Boulevard, #249 Broadway and #501 Boulevard. My mother turned over to me the moneys on this mortgage. 30

In January, 1924, I borrowed an additional sum of \$4,000.00 from the Kay-Bee Investment Co. and my mother gave her bond and mortgage on the three parcels above mentioned to secure that loan. I received the moneys and put them into the erection of this building. 40

Affidavit of Irving Gollin.

In February, 1924, I arranged for a first mortgage loan with the Colonial Life Insurance Company of \$100,000.00 and out of the proceeds I paid all of the existing mortgages and encumbrances against the property, except the two mortgages of \$11,000.00 and \$4,000.00, which mortgages were subordinated to the lien of the Colonial Life Insurance Company mortgage.

Shortly thereafter my father applied to Horace Roberson for a mortgage of \$50,000, which would be a second mortgage on the apartment house. I had at that time received from one, William N. Hutchinson, an offer for this building of \$168,000.00, but I figured out that after the payment of all moneys, charges and the cost of construction and the commissions of the brokers, there would be nothing left for me, and I refused the offer.

I received word from my father that Mr. Roberson would accept a deed for the property and that he had agreed to hold and manage the property and try to settle the claims of my creditors, and that if he could sell the property he would do so and pay himself whatever moneys he advanced, together with his interest and charges for making the loan and for examining the property, and if anything was left he would turn it over to us. We agreed to make such a deed. I received from Mr. Roberson the deed in question, which was taken to my mother's home and there executed by my mother and father, and I delivered the same to Mr. Roberson. Mr. Roberson immediately went into actual possession of the premises and took control thereof and has been in possession and control from that time on, down to the present day and has received all the rents, issues and profits

Affidavit of Irving Gollin.

and has never given me any statement of his accounts, nor has he told me what claims he has paid or purchased, nor has he in any way informed me how much there is now due to him for his advances on this building.

I am informed that he purchased the mortgages of \$11,000.00 and \$4,000.00 held by the Kay-Bee Investment Co., also the Dalrymple mortgage of \$3,000.00, as well as the Markowitz mortgage of \$3,200.00, and that he has also purchased the Brady judgment of \$2,700 and that the same are now held for his benefit and that he is the absolute owner thereof.

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I went to Mr. Roberson on many occasions and asked him to give me a statement of accounting showing how much moneys he had collected and what moneys he had expended, what claims he had paid, and asked him if he would give me back all the mortgages on my mother's property, and in each instance he promised that he would furnish me with an accounting and that he would give me back the mortgages for cancellation.

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All of the moneys which are now due under all of these mortgages were moneys borrowed by my mother and given to me to enable me to erect the apartment house at 34th street and Boulevard, Bayonne, N. J. At the time of the making of the deed by my mother to Mr. Roberson I prepared and delivered to Mr. Roberson a full and true statement setting forth the amounts of moneys which I had borrowed and invested in that apartment house, and that statement shows that the moneys borrowed by my mother on these various mortgages were included in the list and would have to be repaid out of the proceeds of the apartment house.

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IRVING GOLLIN.

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Order to Show Cause.

Sworn to and subscribed before me
this 14th day of April, 1926.

JOHN FLANIGAN,
Master in Chancery of New Jersey.

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ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

Between

ANNETT - MAHNKEN REALTY
COMPANY, a corporation of
New Jersey,

Complainant,

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*and*BETSEY GOLLIN, *et als,**Defendants.**On Bill to
Foreclose.**Order to
Show Cause.*

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The defendants, Betsey Gollin and Max Gollin, her husband, having filed their petition in this Court, duly verified, setting forth that they have certain legal and equitable defenses to the bills of complaint heretofore filed in three certain causes now pending in this Court, and praying that an order to show cause why the decree heretofore entered in said three causes should not be opened, vacated and set aside, to the end that the said defendants may have leave to interpose their answers in said three causes; now, therefore, on motion of Heyman & Heyman, solicitors for the said defendants, Betsey Gollin and Max Gollin, her husband, it is on this 8th day of April, 1926,

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Order to Show Cause.

ORDERED that Annett-Mahnken Realty Company, the complainant in said three causes, be, and it is hereby

ORDERED and DIRECTED to show cause before this Court on the 26th day of April, 1926, at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Chancery Chambers, #1 Exchange Place, Jersey City, Hudson County, New Jersey, why an order should not be made herein opening, setting aside and vacating the decrees heretofore entered in said three causes, and why the defendants, Betsey Gollin and Max Gollin, her husband, should not be permitted to file answers to the bills of complaint filed in said three causes or to take such other steps as shall be necessary to protect their interest in and to the premises more particularly described in the bills of complaint filed in said three causes, and why the said Betsey Gollin and Max Gollin, her husband, shall not have such other and further relief in the premises as shall seem equitable and just; and it is further

ORDERED that in the meantime and until the further order of the Court in the premises, the Sheriff of the County of Hudson and all other persons acting under him, be, and they hereby are restrained from exposing for sale or selling the said lands and premises; and it is further

ORDERED that a copy of this order, together with the petition upon which the same is founded, both to be certified by the solicitors for the petitioner, be served upon Annett-Mahnken Realty Company within five days from the date of this order, and that such service shall be deemed good and sufficient service.

Affidavit of Harry B. Dembe.

Application to modify or vacate on two days' notice.

E. R. WALKER,
C.

Respectfully advised,

10 JOHN BENTLEY,
V.-C.

A true copy.

HEYMAN & HEYMAN,
Solicitors for Petitioners.

Affidavit of Harry B. Dembe.

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IN CHANCERY OF NEW JERSEY.

Between

ANNETT - MAHNKEN REALTY
COMPANY, a corporation of
N. J.,

Complainant,

and

30 BETSY GOLLIN, *et als.*,
Defendants.

On Bill, &c.
Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } *ss.*

HARRY B. DEMBE, of full age, being duly sworn, on his oath, according to law, deposes and says:

40 That he is a member of the law firm of Dembe & Dembe, with offices in the City of Bayonne, County of Hudson and State of New Jersey.

Affidavit of Harry B. Dembe.

The deponent's attention has been called to the following allegation contained in a petition filed by the defendants, to wit: "Your petitioner further shows that immediately upon service upon them of the subpoenas in each of said suits, your petitioners retained the firm of Dembe & Dembe to represent them. That they were led to believe that their interests were being protected, but found out later that no answer had ever been filed for them, or on their behalf, and that a decree in foreclosure had been entered and a writ of *fi. fa.* had been issued to the Sheriff of the County of Hudson and that said premises were then being advertised for sale." Deponent says that the said allegation of the defendants, as recited above, is absolutely and unqualifiedly untrue.

That in the early part of August, 1925, the defendant, Betsy Gollin, called upon the deponent and consulted with him concerning a prospective purchaser she then had for the property located on the corner of the Boulevard and West 34th street, in the City of Bayonne, and particularly to ascertain if she could sell the said property in the face of an agreement she had made, under which the said property had been placed in the management of the Annett-Mahnken Realty Company.

At the time of the said conference, Mrs. Gollin had with her the subpoenas which had been served in the three foreclosure suits, and she inquired of the deponent how much time she would have before the premises covered by the mortgages and involved in the foreclosures would be put up for sale. Mrs. Gollin did not have with her the agreement under which the property at the corner of the Boulevard and

Affidavit of Harry B. Dembe.

West 34th street, Bayonne, was placed under the management of the said Annett-Mahnken Realty Company, and the deponent thereupon informed her that he could give her no opinion with regard to the same until he could first see the existing agreement with the said Annett-Mahnken Realty Company, and that the sale under the foreclosures could not be held until the ordinary and regular procedure of a master's reference, advertising, etc., in the event of no answer being filed, requiring a period of about three months, and furthermore, that if answers were filed, then under an order of reference to a vice-chancellor, advertising, etc., it would take anywhere from six months to a year before the sales could be held. Mrs. Gollin thereupon left the subpoenas with the deponent and promised to bring in a copy of the agreement existing between her and the Annett-Mahnken Realty Company for the property at the corner of the Boulevard and West 34th street, within a few days. The deponent was at the time of the said conference about to leave on a vacation until after Labor Day, and informed Mrs. Gollin of that fact, with the assurance, however, that arrangements would be made in the meantime with the solicitors of the complainant for an extension of time within which to file answers, if it should be determined that answers should be filed, after his return from the said vacation.

The deponent thereupon arranged to procure copies of the bills of complaint from the solicitors of the complainant, and also that the time for the filing of answers in the said suits be extended until the 15th of September, 1925. That a day or two following the said conference in the early part of August, 1925, Mrs. Gollin called

Affidavit of Harry B. Dembe.

upon the deponent with a copy of the agreement made between her and the said Annett-Mahnken Realty Company, and after going over the same with Mrs. Gollin, the deponent informed her that she had a right of negotiating a sale of the property located on the corner of the Boulevard and West 34th street, providing, of course, that out of the proceeds of sale she pay the amount due the Annett-Mahnken Realty Company for the moneys advanced and due thereunder. 10

Shortly after returning from the said vacation in the early part of September, 1925, the deponent communicated with Mrs. Gollin asking her to call concerning the said foreclosure suits, and to decide whether or not it was her desire to contest the same. That Mrs. Gollin called upon the deponent a few days prior to September 15, 1925, asking for the return of the papers which she had left and informed the deponent that she desired him to have nothing further to do in the matter as she had made other arrangements for the handling of the same. The deponent thereupon gave Mrs. Gollin the papers which she had left with him, together with copies of the bills of complaint, and told Mrs. Gollin to inform whoever it was that was to handle the matter for her that the time for the filing of answers had been extended until September 15, 1925. 20 30

Mrs. Gollin inquired at the time thereof as to whether or not she was indebted to the deponent for the consultations and services rendered and was informed by the deponent that there was no charge. No charge was made by the deponent and no money was ever paid by Mrs. Gollin or anyone else for her to the deponent or the firm 40

Affidavit of George E. Cutley.

of Dembe & Dembe in connection with the matters hereinabove recited.

(Signed) HARRY B. DEMBE.

Sworn to and subscribed before me
this 14th day of April, 1926.

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SAMUEL LEVIN,
Attorney at Law of N. J.

Affidavit of George E. Cutley.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

GEORGE E. CUTLEY, being duly sworn according to law, upon his oath says:

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I am an attorney and counsellor at law of the State of New Jersey, having my office and practicing my profession at 586 Newark avenue, Jersey City.

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About the time the first advertisement of sale in the above-entitled foreclosures appeared Mr. and Mrs. Gollin and their son, Irving Gollin, talked with me about preventing the sale of the property. They informed me that Messrs. Dembe & Dembe had been their attorneys, and that no defense had been interposed, and also that they had paid no fee to Messrs. Dembe & Dembe for their services. I advised them that the sales could only be averted by the payment of what was due upon the mortgages, and that they should procure someone with sufficient means to bid in at the foreclosure sale. I pointed out to them that under the declaration of trust the complainant could, if it chose, have sold the property practically without consultation with

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them.

Affidavit of George E. Cutley.

On Saturday, April 3rd, the Gollins, in consultation with me, found that about thirty thousand dollars was needed to take care of the mortgages and liens as they appeared in the sheriff's notice of sale. We endeavored through loan brokers to find someone who would advance the required funds, but without success. During all the time that the Gollins were visiting my office they were in consultation with the sheriff and the sheriff's office, and in the presence of Mr. Enright, of the sheriff's office, it was agreed that Irving Gollin would have a man ready to bid at the sale on the following day, Thursday, April 8th. Prior to this arrangement, the Gollins had asked me to proceed in the Court of Chancery to stay the sales, but I advised them that unless they could show their ability to take care of the mortgages either by cash or a surety bond, they could not succeed, and that, as the mortgages and liens had to be paid sooner or later, I advised against litigation. I also advised them that under the deed of trust, the agreement by the trustee to pay creditors did not mean to clear the property of mortgages—merely to pay general creditors and interest on the mortgages out of the rents and profits of the property.

The action of the Gollins in applying in this cause for a stay, through Messrs. Heyman & Heyman, was a complete surprise to me, as I was informed by Irving Gollin on the previous day, in the presence of Mr. Enright, that he had someone who was going to bid in at the sale, and he expressed himself as very much satisfied that the matter could be adjusted through a foreclosure sale.

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Affidavit of Horace Roberson.

I never received any fee for services in this case, nor did I consider myself retained in any way. Prior to the time the Gollins consulted me in this matter they had come to me regarding the estate of one Mr. Gluckman, brother of Mrs. Gollin.

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GEORGE E. CUTLEY.

Subscribed and sworn to before me
at Jersey City, this 17th day of
April, A. D. 1926.

ANN G. HAGAN,
(SEAL) Notary Public of New Jersey.

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Affidavit of Horace Roberson.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

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HORACE ROBERSON, of full age, being duly sworn according to law, on his oath deposes and says that he is an attorney and counsellor at law, practicing his profession in the courts of the State of New Jersey, having his place of business and office located at No. 29 West 8th street, Bayonne, New Jersey. That deponent has read the petition and affidavits filed by Betsey Gollin and Max Gollin, her husband, and Irving Gollin in the above-entitled matter. That deponent is well acquainted with said Betsey Gollin and Max Gollin, her husband; that he has acted in various capacities for them in legal matters for the past twenty-five years or more. That during the summer of 1923 said Max Gollin and Irving Gollin, his son, came to deponent

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Affidavit of Horace Roberson.

on various occasions seeking assistance in financing the building then in the course of construction on the northeast corner of the Hudson County Boulevard and West 34th street, Bayonne, New Jersey, now know as No. 880 Boulevard. That at the request of Betsey Gollin and Max Gollin, her husband, the firm of Roberson & Roberson, of which deponent is a member, procured from one John L. Dalrymple a loan of \$3,000.00, covering, as a second mortgage, the property owned by Betsey Gollin known as No. 772 Avenue C, Bayonne, New Jersey. Said bond and mortgage were duly executed by said Betsey Gollin and Max Gollin, her husband, and the \$3,000.00 secured thereby turned over to them.

That early in 1924 Max Gollin and Betsey Gollin came to this deponent and stated that the creditors of Irving Gollin were pressing them very hard for the payment of their bills incurred in the construction and erection of said apartment house, and asked this deponent for the loan of sufficient funds to pay the creditors. Deponent told them immediately that he had not sufficient funds to make the loan that was necessary to pay these creditors. The property was covered by a mortgage for \$100,000.00 given to the Colonial Life Insurance Company, and as deponent remembers it, they would be required to have at least \$60,000.00 to pay off all of the bills which Irving Gollin and his parents stated were necessary to satisfy all claims.

At the earnest request and solicitation of Max Gollin in particular, deponent went to Charles E. Annett, with whom Max Gollin had had many dealings and tried to enlist Mr. Annett in the hope of saving Max Gollin and his wife, Betsey Gollin, from financial ruin, and there were many

Affidavit of Horace Roberson.

consultations in which Mr. Annett and the Gollins and this deponent canvassed the situation. It was finally agreed that if Betsey Gollin would convey the premises known as #880 Boulevard, Bayonne, New Jersey, to the Annett-Mahnken Realty Company, of which Mr. Charles E. Annett was the president and chief owner, that the

10 Annett-Mahnken Realty Company would assume charge of the building known as No. 880 Boulevard, Bayonne, New Jersey, collect the rents and take all necessary care of the building and would endeavor to raise in various ways the moneys to pay off and satisfy the creditors and save the property from sale, either by foreclosure or under executions upon judgments that had been recovered or that were likely to

20 be recovered by suits then pending, and in order that there would be no mistakes or misunderstandings about the relationship between the Annett-Mahnken Realty Company and the Gollins, this deponent drew a declaration of trust, and its terms were carefully discussed by Max Gollin and especially in his presence, and in the presence of Betsey Gollin and Irving Gollin, their son, who asked many questions about it. During these discussions, which were held on

30 several different dates and the document re-drafted, the compensation of the Annett-Mahnken Realty Company for the collection of rents was agreed upon, also the compensation for services which the Annett-Mahnken Realty Company was to render to the Gollins was to be fixed by future considerations, as it was then impossible to determine what would be required and how long the trust relationship would continue. Gollin informed Mr. Annett in my presence that they had been offered \$165,000.00 for

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Affidavit of Horace Roberson.

the property in question. He stated, however, that they could not accept this because it was not sufficient to pay all debts which had been incurred by Irving Gollin in the construction of said building, and that they would not sell at that price. Nobody ever offered to deponent, and as far as deponent knows, to the Annett-Mahnken Realty Company, \$165,000.00 or any other sum near it. Money was raised by Mr. Annett, and under the direction of the deponent many bills were paid. The John L. Dalrymple mortgage, which Gollin states was a mortgage covering other lands of Max and Betsey Gollin, but the proceeds of which had been used for the construction of that building, fell due, and in order to keep this mortgage from being foreclosed, it was purchased by the Annett-Mahnken Realty Company for the full principal sum with interest. Likewise, a certain bond and mortgage made by the Gollins to Lillian Markowitz for \$3,200.00, covering other property, upon which foreclosure proceedings were threatening, and in order to save it from foreclosure, the Annett-Mahnken Realty Company purchased said bond and mortgage for the full principal sum with accrued interest. Likewise, the judgment held by James Brady's Sons Company was paid for by moneys raised by the Annett-Mahnken Realty Company and an assignment thereof was taken. Likewise, the Annett-Mahnken Realty Company paid to the Kay-Bee Investment Company the sum of \$15,000.00 with interest upon the mortgage which this investment company held against said property and took an assignment thereof.

During all this time the Annett-Mahnken Realty Company were taking care of the property

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Affidavit of Horace Roberson.

to the best of their ability. Irving Gollin, the son of Betsey and Max Gollin, occupied one of the most expensive apartments in the apartment building and he refused to pay any rent therefor, and many complaints were made to me by the Annett-Mahnken Realty Company about the interference of Irving Gollin in the management of the property, and Irving Gollin came to see deponent many times, complaining about the management by Annett-Mahnken Realty Company of said property. Deponent never had possession of the premises at No. 880 Boulevard, but he has frequently been consulted by Mr. Annett and the Gollins about its management. The relationship between the Gollins and Mr. Annett became very unpleasant, and they used deponent as the medium of exchanging complaints. One matter of dispute was Irving Gollin's occupancy of an apartment without paying any rent.

It was not until early in January, 1926, that this deponent induced Irving Gollin to become a tenant and to begin to pay rent for the apartment which he occupied and still occupies. He paid to this deponent \$72.00 rent for the month of January. He had been permitted to remain there without the payment of rent at the earnest solicitation of his mother, although the property was constantly running behind and the income was not sufficient to pay all current claims besides the quarterly payment of \$1,000.00 on the mortgage held by the Colonial Life Insurance Company.

Deponent says that the Gollins were frequently given statements of the amounts collected and disbursed by the Annett-Mahnken Realty Company. Deponent went with Irving Gollin to the

Affidavit of Horace Roberson.

Annett-Mahnken Realty Company's office, where Mr. Annett showed Irving Gollin the ledger account, which set out in detail the receipts and expenditures. Irving Gollin and Max Gollin were frequently consulted about the corrections of the claims presented and payment was not made without their approval except as to such debts as were incurred by the Annett-Mahnken Realty Company for the care and management of the property. Deponent heard Mr. Annett direct his bookkeeper in Irving Gollin's presence to permit him to see the account at any time and to give him any information that he might desire. Irving Gollin's requests for such information were usually made when there was a prospective purchaser at hand and it was necessary to know what must be realized from the apartment at No. 880 Boulevard to discharge the debts. Deponent never agreed with the Gollins or any one of them to raise money and pay off and discharge mortgages and liens on their other properties and surrender them to the Gollins for cancellation and depend on their equity in the apartment at No. 880 Boulevard for reimbursement. They were told in the beginning that neither this deponent nor Mr. Annett believed that there was sufficient equity for that purpose. At every conference it was agreed that at least the sum of \$175,000.00 would be required, and prospective purchasers were asked that latter sum in order to do so.

The Dalrymple, the Markowitz and the Kay-Bee Investment Company mortgages and the Brady judgment were all taken over to prevent foreclosure and sale, because deponent and Mr. Annett hoped that the apartment at No. 880 Boulevard might be sold and that some of these

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Affidavit of Horace Roberson.

liens might be thereby released and discharged from the proceeds, but the Gollins were distinctly informed that they would not be cancelled without payment.

10 Deponent further said that neither Charles E. Annett nor this deponent had any thought whatever in their minds of cheating or defrauding said Max Gollin or Betsey Gollin or anybody else, and that neither deponent nor Charles E. Annett did deceive said Gollins in any manner.

20 That after the trouble between the Annett-Mahnken Realty Company and the Gollins became acute, Mr. Annett, speaking for the Annett-Mahnken Realty Company, demanded that the Gollins repay to the Annett-Mahnken Realty Company all the moneys which they had invested in the property and settle with him in accordance with the terms of the declaration of trust. They thereupon refused to do so. That Irving Gollin did appeal to this deponent to raise sufficient money and pay to the Annett-Mahnken Realty Company the money so due to it. Deponent did not have the money to loan for that purpose, neither did deponent have any other clients to whom he could go and procure said funds to loan to the Gollins to pay for the indebtedness to the Annett-Mahnken Realty Company.

30 That thereupon Mr. Annett went to Messrs. Carrick & Wortendyke, counsellors at law, in Jersey City, and authorized them to bring foreclosure proceedings against the properties covered by the mortgages, and as far as deponent knows and verily believes, the proceedings were carried on in an orderly and public manner, and that no answers were filed and no efforts were ever made to stay the proceedings until the first

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Affidavit of Horace Roberson.

day to which the sale had been adjourned, and then at the request of Mr. George E. Cutley, a counsellor at law of this State, the sale of the premises under the three executions was adjourned from time to time till April 8, 1926.

This deponent further says that Betsey Gollin and Max Gollin, her husband, are not illiterate persons and do understand the English language. This deponent has been doing business with them for the past twenty-five years, and that deponent does not know any other language and cannot speak any other language than the English language, and has always spoken the English language in the presence of the Gollins, and that the Gollins have never at any time complained that they could not understand the language which deponent speaks, and that deponent has never had any trouble during all the time in understanding such English language as they used in their conversations.

HORACE ROBERSON.

Subscribed and sworn to this 15th
day of April, 1926, before me.

GEORGE E. GRISWOLD,
Notary Public of New Jersey.

Affidavit of Charles E. Annett.

Affidavit of Charles E. Annett.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

CHARLES E. ANNETT, of full age, being duly
sworn according to law, on his oath deposes and
10 says that he is the president and general man-
ager of the Annett-Mahnken Realty Company;
that the Annett-Mahnken Realty Company is
organized to buy and sell real estate, collect
rents, negotiate insurance contracts and to
transact a general real estate business.

That deponent is well acquainted with Max
Gollin and Betsey Gollin, his wife, and their son,
Irving Gollin. That he has had many transac-
tions with them during the past twenty years or
20 more. That early in 1924 Horace Roberson, a
member of the firm of Roberson & Roberson,
counsellors at law, called upon deponent and
stated to him that the Gollins were in financial
trouble because of the creditors of Irving Gollin,
who had erected a building known as No. 880
Boulevard, Bayonne, New Jersey. That these
creditors were pressing for the payment of their
claims for labor and material in the construc-
tion of the said building. That some of the
30 claims had already been reduced to judgments;
that other suits were pending, and that other
suits were threatening, and that unless some-
body came to their aid the whole of the Gollin
property would be swept away, as they were
without any means to satisfy the creditors.

After several conferences with the Gollins and
with Horace Roberson, it was finally agreed that
Betsey Gollin and her husband, Max Gollin,
would convey the property absolutely to the
40 Annett-Mahnken Realty Company so that it

Affidavit of Charles E. Annett.

would have a free hand in its management, and that then deponent, acting through said Annett-Mahnken Realty Company, would, to the best of his ability, secure funds and thus keep the creditors from enforcing their claims. That in order that there be no misunderstanding, deponent agreed for his company to execute a declaration of trust, and that the terms of the trust should be carefully and fully stated, and after several conferences on that point and a redrafting of the document, the instrument as now attached to the petition of the Gollins in the above-entitled matter was executed by the deponent. Deponent did assume management of the property in May, 1924, and collected the rents, and raised moneys in various ways and paid off many of the creditors, and from time to time rendered statements to the Gollins showing fully all his transactions. That deponent had many conferences with the Gollins about the correctness of many of the claims, and at their request refused payment on some of them until the claimants had corrected defective work in the building or corrected errors in the bills presented.

That the building is constructed for thirty-two tenants. That at the time the premises were conveyed to him Irving Gollin occupied one of the apartments, which at that time was renting for \$80.00 per month. Deponent insisted that Irving Gollin should pay rent, but at the earnest solicitation of Betsey Gollin, deponent desisted for a time until, as she said, Irving Gollin got something to do.

Deponent further says that Irving Gollin was constantly interfering with the other occupants of the building and causing dissension between the tenants of the building and this deponent's

Affidavit of Charles E. Annett.

company, so that deponent informed the Gollins that he wanted them to pay off the moneys advanced and take the building themselves, as he could not manage it with the constant annoyance caused by Irving Gollin's interference. Then, at the most urgent solicitations of Betsey Gollin and Max Gollin, and the further solicitation of Horace Roberson, who had been very friendly with them for many years, deponent did desist upon their assurance that they had some purchasers and they would soon bring to him a purchaser who would take the property, and out of the proceeds of the sale deponent's company would be reimbursed for its advances and paid for its services. Many statements were made at that time showing the financial condition of the building, but no definite offer was ever made that was acceptable to the Gollins nor that would pay the indebtedness on the building. Deponent further says that in order to save the Gollins from the pressure of creditors he was forced to acquire mortgages covering other property owned by the Gollins, and that finally when the condition with Irving Gollin became unbearable and said Betsey Gollin did not raise the money to pay deponent's company, nor bring a suitable purchaser, that deponent was forced to begin foreclosure proceedings against the Gollins upon the mortgages which he had been forced to acquire.

Deponent further says that he never agreed or had the slightest suggestion that he should pay off the mortgages on other properties than No. 880 Boulevard and cancel and surrender them to the Gollins without receiving anything for it excepting the equity in the property at No. 880 Boulevard.

Affidavit of Charles E. Annett.

That he never deceived nor attempted to deceive the Gollins in any way in anything. That Roberson has been acting as counsel in the matter, but has in no way assumed any control of the property, but has been a "go-between" between this deponent and the Gollins in trying to smooth out difficulties that arose.

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Deponent further says that as Irving Gollin was often the spokesman for his mother, Betsey Gollin, and Max Gollin, that he instructed his bookkeeper in his absence to give any information to said Irving Gollin, and to show him the account with this building so that he might have any information that was necessary concerning its financial condition and the amount that would be necessary to discharge the total indebtedness. This was done not only for their information, but also to assist said Irving Gollin in finding a purchaser for the building upon such terms as would discharge the debts. Deponent also at all times furnished and was willing to furnish him with such statements, and he would furnish them to Mr. Roberson, who asked for them for the Gollins, and to Irving Gollin and Max Gollin, and that deponent has tried in every possible way to aid and assist the Gollins and to manage the property in such way as to make it profitable.

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Some of the other properties covered by these mortgages which deponent's company acquired in order to save the Gollins were not cared for. Taxes were far in arrears, and one property in particular, known as No. 499 Boulevard, which was constructed for a six-family house, was tenanted by only two families, and unless the property was taken into possession by some responsible party it would soon wipe out the equity

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Affidavit of Charles E. Annett.

which the second mortgage covered. That the first mortgagees on these properties, because of the non-payment of taxes and other municipal liens and of the lack of repair, would foreclose their mortgages.

CHARLES E. ANNETT.

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Subscribed and sworn to this 16th
day of April, 1926, before me.

GEORGE E. GRISWOLD,
Notary Public of New Jersey.

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Order Discharging Order to Show Cause.

**ORDER DISCHARGING ORDER
TO SHOW CAUSE.**

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>ANNETT-MAHNKEN REALTY COMPANY, a corporation of New Jersey, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BETSEY GOLLIN and others, <i>Defendants.</i></p>	}	<p>#58-609, 610, 10 611.</p> <p><i>On Bills to Foreclose.</i></p> <p><i>Order Dis- charging</i></p> <p><i>Order to Show Cause.</i></p>
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This matter being opened to the Court by Benjamin Heyman, Esquire, of counsel with the petitioners, upon the return of the order to show cause heretofore made in the above-entitled causes, and upon reading and filing the affidavits of Betsey Gollin, Max Gollin and Irving Gollin, served and filed since the making of said order to show cause, and upon reading and filing the affidavits of Harry B. Dembe, George E. Cutley, Horace Roberson and Charles E. Annett, presented by Charles L. Carrick, Esquire, of counsel with the complainant Annett-Mahnken Realty Company, and upon hearing counsel in regard thereto, and the Court having considered the same,

It is on this 26th day of April, in the year one thousand nine hundred and twenty-six, ORDERED that the order to show cause made in said cause on the 8th day of April, nineteen hundred and twenty-six, be and the same is hereby discharged, and the stay therein granted restraining the

Order Discharging Order to Show Cause.

sheriff of the County of Hudson until the further order of this Court in the premises from exposing for sale or selling the lands and premises mentioned in the above-entitled foreclosure suits, be and the same is hereby vacated and set aside.

10 And it is further ordered that the said Betsey Gollin and Max Gollin, the petitioners in this proceeding, do pay unto Carrick & Wortendyke, solicitors and of counsel with the complainant, the Annett-Mahnken Realty Company, a counsel fee of one hundred and fifty dollars.

Respectfully advised,

JAMES FIELDER,
Vice-Chancellor.

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*Notice.***NOTICE AND AFFIDAVIT.**

IN CHANCERY OF NEW JERSEY.

Between

ANNETT-MAHNKEN REALTY
COMPANY, a corporation of
New Jersey,

*Complainant,**and*

BETSEY GOLLIN, *et als.*,

*Defendants.**On Bill to* 10
*Foreclose.**On Petition.**Notice.*

To Messrs. Carrick & Wortendyke, solicitors for
the complainant.

GENTLEMEN :

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PLEASE TAKE NOTICE that on Tuesday, the 1st
day of June, 1926, at 10:00 o'clock in the fore-
noon, or as soon thereafter as counsel can be
heard, I shall apply to his Honor, Vice-Chan-
cellor Fielder, at Chancery Chambers, Jersey
City, to vacate the order entered on the 26th of
April, 1926, in this cause, and to reargue the
rule to show cause issued in the above-entitled
cause on the 8th day of April, 1926; that I shall,
at the same time and place, ask leave to amend
the petition upon which said rule to show cause
was issued in this cause by adding paragraph
19 to same, to read as follows:

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"19. Your petitioners further show that in
the latter part of 1924, Horace Roberson, Esquire,
for himself and for the complainant, the Annett-
Mahnken Realty Company, handed your peti-
tioners an account showing that there had been
collected in rents from the Boulevard apartment

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Notice.

house described by metes and bounds in the trust agreement annexed to and made a part of this petition, from May 28th to November 1, 1924, the sum of \$8,198.49, and that on the construction account, inclusive of the \$100,000 mortgage held by the Colonial Life Insurance Company, the complainant would have to pay the sum of \$162,257.22. Said statement is itemized, and among the items is the \$3,000 mortgage which has been foreclosed, and which was originally given to John L. Dalrymple, and is shown on said statement as being held by H. Roberson, and on said statement also appears a mortgage of \$15,000, under the name of B. DeVin, which represents the \$11,000 mortgage and the \$4,000 mortgage originally given to the Kay-Bee Investment Co.; that said statement further shows below the typewritten items, and added to said account in the handwriting of said Horace Roberson, Lipschitz mortgage \$3,200, which is the mortgage originally given to Lillian Markowitz, and which said mortgages are the ones being foreclosed by the complainant herein. Among said items is also listed the judgment of James Brady Sons Co. for \$2,700, in the name of a claim owing to A. Seclow, who is the attorney for the James Brady Sons Co.

20. That said complainant, under the terms of the agreement entered into with your petitioners, as evidenced by the trust agreement annexed hereto and made a part hereof, undertook and was required to pay said mortgages and judgment, which said complainant has now foreclosed, and to be reimbursed out of the income or proceeds of sale of the apartment house described in the said trust agreement; that said complainant carried out its duty in paying said

Affidavit of Irving Gollin.

mortgages, but should have caused same to be cancelled of record, instead of taking assignments to it and foreclosing same, and should have advanced the money and paid the claim of James Brady Sons Co., instead of leaving it open and permitting it to be assigned to Mildred J. Smith.”

PLEASE TAKE FURTHER NOTICE that at said time and place I shall read the affidavit, a copy of which is hereto annexed, in support of said application.

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Dated May 27, 1926.

Respectfully yours,

PHILIP J. SCHOTLAND,
Solicitor for Defendants.

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IN CHANCERY OF NEW JERSEY.

Between

ANNETT-MAHNKEN REALTY
COMPANY, a corporation of
New Jersey,

Complainant,

and

BETSEY GOLLIN, *et als.,*

Defendants.

*On Bill to
Foreclose.*

On Petition.

Affidavit.

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STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

IRVING GOLLIN, being duly sworn, on his oath deposes and says:

I have read the notice addressed to Messrs. Carrick & Wortendyke in the above-entitled

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Affidavit of Irving Gollin.

cause, bearing this date, and know of my own knowledge that the allegations alleged in the proposed paragraphs 19 and 20 to be added to the petition in the above cause are true. Said allegations being as follows:

10 “19. Your petitioners further show, that in the latter part of 1924, Horace Roberson, Esquire, for himself and for the complainant, the Annett-Mahnken Realty Company, handed your petitioners an account, showing that there had been collected in rents from the Boulevard apartment house described by metes and bounds in the trust agreement annexed to and made a part of this petition, from May 28th to November 1, 1924, the sum of \$8,198.49, and that on the construction account, inclusive of the \$100,000 mortgage held by the Colonial Life Insurance Company, 20 the complainant would have to pay the sum of \$162,257.22. Said statement is itemized, and among the items is the \$3,000 mortgage which has been foreclosed, and which was originally given to John L. Dalrymple, and is shown on said statement as being held by H. Roberson, and on said statement also appears a mortgage of \$15,000, under the name of B. DeVin, which represents the \$11,000 mortgage, and the \$4,000 30 mortgage originally given to the Kay-Bee Investment Co.; that said statement further shows below the typewritten items, and added to said account in the handwriting of said Horace Roberson, Lipschitz mortgage \$3,200, which is the mortgage originally given to Lillian Markowitz, and which said mortgages are the ones being foreclosed by the complainant herein. Among said items is also listed the judgment of James Brady Sons Co. for \$2,700, in the name of a claim 40 owing to A. Seclow, who is the attorney for the James Brady Sons Co.

Affidavit of Irving Gollin.

20. That said complainant, under the terms of the agreement entered into with your petitioners, as evidenced by the trust agreement annexed hereto and made a part hereof, undertook and was required to pay said mortgages and judgment, which said complainant has now foreclosed, and to be reimbursed out of the income or proceeds of sale of the apartment house described in the said trust agreement; that said complainant carried out its duty in paying said mortgages, but should have caused same to be cancelled of record, instead of taking assignments to it and foreclosing same, and should have advanced the money and paid the claim of James Brady Sons Co., instead of leaving it open and permitting it to be assigned to Mildred J. Smith.”

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MAX GOLLIN. 20

Sworn and subscribed to before me
this 27th day of May, 1926.

HELEN JEDELL,
Notary Public of N. J.

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*Stipulation.***STIPULATION.**

IN CHANCERY OF NEW JERSEY.

	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">ANNETT-MAHNKEN REALTY COMPANY, a corporation of New Jersey, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">BETSEY GOLLIN, <i>et als.,</i> <i>Defendants.</i></p>	<p style="font-size: 4em;">}</p> <p><i>On Bill, etc.</i> <i>Stipulation.</i></p>
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It is hereby stipulated by and between Carrick & Wortendyke, Esqs., solicitors for the complainant, and Philip J. Schotland, Esq., solicitor for the defendants, that the argument on the petition to amend the petition heretofore filed in the above cause, notice of which was served upon the solicitors for the complainant on the 28th day of May, 1926, and which was set down in said notice for the first day of June, 1926, be continued to June 7, 1926, at Chancery Chambers, Jersey City, at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard.

June 1, 1926.

CARRICK & WORTENDYKE,
Solicitors for Complainant.

PHILIP J. SCHOTLAND,
Solicitor for Defendants.

Answering Affidavit of Horace Roberson.

**ANSWERING AFFIDAVIT OF
HORACE ROBERSON.**

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>ANNETT-MAHNKEN REALTY COMPANY, a corporation of New Jersey,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BETSEY GOLLIN and others,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p><i>On Bill to Foreclose.</i></p> <p><i>On Petition, &c.</i></p> <p><i>Answering Affidavit of Horace Roberson.</i></p>	<p>10</p>
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STATE OF NEW JERSEY, } COUNTY OF HUDSON. }	} ss.	20
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HORACE ROBERSON, of full age, being duly sworn according to law, upon his oath deposes and says:

After the order discharging the stay of the sale under the executions in foreclosure in the above-entitled causes was entered the property was brought to sale by the sheriff of Hudson County, and the defendants took up with the complainant the obtaining of some time to redeem, if the property should be bought in by the complainant. The defendants were represented in that case by Charles H. Abramson, Esquire, an attorney and counsellor of Bayonne, and, as a result of the negotiations, the complainant entered into an agreement giving the defendants thirty days within which to redeem the premises under the terms stated in said instrument, of which a copy is hereto annexed and marked "Exhibit A." The sale thereupon proceeded on the 29th day of April, and the property was then

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Answering Affidavit of Horace Roberson.

10 struck off by the sheriff at public sale to the complainant. Mr. Abramson exerted himself actively to secure funds for the defendants, but on Tuesday last, June 1st, advised me that he was unable to raise the money necessary to redeem the property, and that he no longer was interested for the defendants. The time within which to redeem having expired, the sheriff has delivered to the complainant the deeds conveying the premises in pursuance of their purchase on April 29th last.

20 My attention has been called to the application made by Philip J. Schotland, Esquire, now representing the defendants in substitution for Messrs. Heyman & Heyman, who formerly represented them, and to the affidavit of Irving Gollin, which is annexed to the notice of motion which was to have been made on the 1st day of June, and which now stands adjourned until the 7th day of June, 1926. As attorney for Max Gollin, Betsey Gollin and Irving Gollin, in and about the settlement of claims against the apartment house known as Number 880 Boulevard in the City of Bayonne, New Jersey, I transacted their business. The Annett-Mahnken Realty Company rendered to the Gollins, including said Irving Gollin, numerous statements showing rents received from the premises, and also disbursements of all kinds accruing in the management of the property. I do not remember the specific statement of account to which the affidavit of Irving Gollin refers in his affidavit of May 27, 1926, because statements were many times rendered whenever there was a prospective purchaser for the property, and in each case said Irving Gollin inquired how much money would be needed to pay off the specific liens on the

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Answering Affidavit of Horace Roberson.

property 880 Boulevard, as well as the other liens on the other properties, which liens, Irving Gollin informed me, were created for the purpose of raising funds for the construction of the building known as 880 Boulevard, Bayonne, and which liens said Irving Gollin wished to be paid out of the proceeds of the sale of Number 880 Boulevard. I always gave to said Irving Gollin information as to the amount due upon the specific liens mentioned by him covering other properties of Betsey Gollin, but at no time did Irving Gollin suggest to me, nor did I suggest to him or to anyone else, that the complainant, or this deponent, would discharge said liens against other properties owned by Betsey Gollin or Max Gollin, and rely upon the property No. 880 Boulevard for reimbursement. I believe that the equity in the property number 880 Boulevard is insufficient to pay all these outstanding liens, but I always encouraged Irving Gollin, and myself tried to interest prospective purchasers to purchase the premises No. 880 Boulevard at a price sufficiently large to discharge at least some of the outside liens. I was interested in a friendly way in the welfare of Betsey Gollin and Max Gollin, the parents of said Irving Gollin, and hoped that the premises number 880 Boulevard might be sold at a price sufficient to pay off some of these outside liens, and thus save these other properties for the parents of Irving Gollin.

HORACE ROBERSON.

Subscribed and sworn to before me
this 7th day of June, A. D. 1926.

CHAS. RUBENSTEIN,
Master in Chancery of New Jersey.

*Exhibit A.***Exhibit A.**

Bayonne, N. J., April 29, 1926.

10 WHEREAS, the sheriff of Hudson County has in his possession three several writs of *feri facias* issued by the Court of Chancery in three suits therein, wherein the Annett-Mahnken Realty Company is complainant, and Betsey Gollin and others are defendants; and WHEREAS, said sheriff is this day about to execute said writs by sale of the premises therein described, excepting therefrom the premises known as #880 Boulevard, Bayonne, N. J.; and

 WHEREAS, the said defendant Betsey Gollin has been unable to raise the amount necessary to satisfy said writs; and

20 WHEREAS, said Betsey Gollin has requested the privilege of redeeming said tracts if the complainant should purchase same at said sale;

 Now, THEREFORE, in consideration of the sum of one dollar (\$1.00) to it in hand paid by said Betsey Gollin, the receipt whereof is hereby acknowledged, the said Annett-Mahnken Realty Company agrees that in the event of its purchase of said properties to reconvey the same or assign its bid, whichever may be necessary, if within
30 thirty days from the date hereof said Betsey Gollin shall pay all moneys due on said decrees, besides all costs and expenses, as well as the claims said Annett-Mahnken Realty Company has against said Betsey Gollin and her husband, Max Gollin, and the Bayonne Hardware Company, for premiums on sundry policies of fire insurance issued by it covering the several properties of said Gollins. The full amount due on said decrees to be paid whether or not the bids

Exhibit A.

at the sheriff's sale amount to the sum total of said decrees and costs.

IN WITNESS WHEREOF the said Annett-Mahnken Realty Company has the day and year above written caused its seal to be annexed and signed by duly constituted officer of the company.

ANNETT-MAHNKEN REALTY CO., 10

By CHARLES E. ANNETT,
Prest.

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Order Denying Petition.

ORDER DENYING PETITION.

Filed June 7, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ANNETT-MAHNKEN REALTY COMPANY, a corporation of New Jersey,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BETSEY GOLLIN and others, <i>Defendants.</i></p>	<p>#58-609.</p> <p><i>On Bill to Foreclose.</i></p> <p><i>On Petition, &c.</i></p> <p><i>Order.</i></p>
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20 This matter being opened to the Court by Philip J. Schotland, Esquire, solicitor and of counsel with the defendants, upon notice to Messrs. Carrick & Wortendyke, solicitors and of counsel with the complainant, and upon reading and filing the petition in behalf of the defendants and the supporting affidavit of the defendant Irving Gollin, and the affidavit of Horace Roberson, Esquire, filed in behalf of the complainant, and having heard the argument of

30 counsel;

It is thereupon on this 7th day of June, 1926, ordered that the application of the defendants be, and the same is hereby denied, with costs to the complainant.

Respectfully advised,

JAMES F. FIELDER,
V.-C.

Notice of Appeal.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between

ANNETT-MAHNKEN REALTY
COMPANY, a corporation of
New Jersey,

Complainant,

and

BETSEY GOLLIN, *et als.*,

Defendants.

*On Bill to
Foreclose.*

10

On Petition.

*Notice of
Appeal.*

The defendants, Betsey Gollin and Max Gollin, hereby appeal from the orders made in the above-entitled cause by the Chancellor, on the advice of Vice-Chancellor Fielder, on the 26th day of April, 1926, and on the 7th day of June, 1926, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort in all causes.

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Dated June 9, 1926.

PHILIP J. SCHOTLAND,
Solicitor for and of Counsel with Defendants,
Betsey Gollin and Max Gollin.

30

I conceive there is good cause for appeal in the above-entitled cause.

PHILIP J. SCHOTLAND,
Of Counsel with Defendants,
Betsey Gollin and Max Gollin.

Service acknowledged, June 11, 1926.

CARRICK & WORTENDYKE,
Solicitors of Complainant.

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Petition of Appeal.

PETITION OF APPEAL.

New Jersey Court of Errors and Appeals

10	ANNETT-MAHNKEN REALTY COM- PANY, a corporation of New Jersey,	}	<i>On Appeal from Court of Chancery.</i>
	<i>Appellee,</i>		
	<i>vs.</i>		
	BETSEY GOLLIN, <i>et als.</i> , <i>Appellants.</i>	}	<i>Petition of Appeal.</i>

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

20 The petition of Betsey Gollin and Max Gollin, the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date April 26, 1926, and by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 7th day of June, 1926, in certain causes in said Court of Chancery, wherein the said Annett-Mahnken Realty Company was the complainant, and the said Betsey Gollin and Max Gollin were the defendants, in this respect, to wit: That said orders discharge a rule to show cause issued in said causes and deny the prayers of the said appellants in their petition, wherein they pray that an order be made, opening, vacating, and setting aside the foreclosure decrees entered in

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Petition of Appeal.

all three foreclosure suits entitled as above, and for an order permitting the said appellants to interpose an answer to all three foreclosure suits, and for such other relief as they may be entitled to, and petitioners appeal from said orders of the Chancellor, upon the grounds that the same are erroneous, in that they dismiss the petition of petitioners and deny petitioners the relief prayed for. 10

2. Petitioners therefore pray that the said orders of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

PHILIP J. SCHOTLAND,
Solicitor for and of Counsel with Appellants. 20

Service acknowledged June 11, 1926.

CARRICK & WORTENDYKE,
Sol'rs. of Compl't.

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*Bill to Foreclose, No. 1.***Bill to Foreclose, Suit No. 1.**

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

10 The complainant Annett-Mahnken Realty Company, a corporation of the State of New Jersey, respectfully shows:

1. On June 11, 1923, Betsey Gollin, being indebted to one Lillian Markowitz in the sum of thirty-two hundred dollars, with Max Gollin, her husband, executed to said Lillian Markowitz their bond of that date to secure that sum, payable on January eleventh, nineteen hundred twenty-four, with interest at the rate of six per cent. per annum, payable semi-annually from the date of said bond.

2. To secure payment of the bond said Betsey Gollin and Max Gollin, her husband, executed to said Lillian Markowitz a mortgage of even date with said bond, and thereby conveyed to her in fee the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond; which mortgage having been first
30 duly acknowledged and the certificate of acknowledgment endorsed thereon, was recorded in Hudson County Register's office in Book 1169 of mortgages for said county, page 476.

3. The mortgaged premises are described as follows: All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New
40 Jersey.

Bill to Foreclose, No. 1.

BEGINNING at a point on the westerly side of the new Public Road, commonly called the Boulevard, distant thereon sixty-six (66) feet southerly from the southerly side of West 19th street measured on a line running parallel with the easterly line of Lot 12, hereinafter mentioned; thence running (2) westerly parallel with West 19th street, ninety-six and forty-three (96.43) one hundredths feet to the easterly line of Lot 12 in Block 3278, on map of property belonging to Joseph B. Close, situated in the Second Ward, City of Bayonne, Hudson County, N. J., Smith & Weston, Civil Engineers; thence (2) southerly along the easterly line of said Lot 12, parallel with Avenue B, as shown on said map, thirty-four (34) feet, in the division line between said property and the land formerly known as the Andrew Cadmus farm; thence (3) easterly parallel with West 19th street, ninety-five and ninety-two one hundredths (95.92) feet more or less to the westerly side of the said Hudson County Public Road; and thence (4) northerly along the same thirty-four feet more or less to the point or place of beginning.

4. By written assignment dated September 9, 1924, said mortgagee assigned said bond and mortgage to Horace Roberson, which assignment has not been recorded, but is in the possession of complainant.

5. By written assignment dated July 20, 1925, said Horace Roberson assigned said bond and mortgage to complainant, which assignment has not been recorded, but is in the possession of complainant.

6. On May 8, 1924, James Brady's Sons Co., a corporation of the State of New Jersey, en-

Bill to Foreclose, No. 1.

tered a judgment in the Hudson County Circuit Court against Betsey Gollin and others for the sum of \$2,678.77, damages and costs, which judgment is entered in Liber 35 of Circuit Court Judgments, page 199.

7. By written assignment dated June 24,
10 1924, said James Brady's Sons Co. assigned said judgment to Mildred J. Smith, which said assignment was recorded December 23, 1924, in Book 4 of Assignments of Judgments, page 66.

Any interest which said Mildred J. Smith has in said judgment is subsequent to complainant's mortgage.

8. Said mortgage, by its terms is long overdue, and complainant has elected that the whole of said principal sum, together with interest
20 thereon, shall be immediately payable.

9. Said Betsey Gollin and Max Gollin, her husband, have always been in possession of the mortgaged premises.

10. The whole of said principal sum, with interest thereon from November 9, 1924, remains due upon complainant's bond and mortgage.

30 Complainant is without adequate remedy at law and therefore prays:

1. That Betsey Gollin and Max Gollin, her husband, and Mildred J. Smith, who are the defendants to this suit, may answer this bill of complaint without oath, and each statement therein made;

2. That an account may be taken of the amount due on complainant's mortgage;

3. That the defendants, or one of them, may
40 be decreed to pay complainant the amount so

Bill to Foreclose, No. 2.

found due, with interest and costs by a short day, to be appointed by this Court, and that in default of such payment they and each of them be debarred and foreclosed of all equity of redemption in said lands; or

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on its mortgage, with interest and costs. 10

5. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

CARRICK & WORTENDYKE,
Solicitors and of Counsel with Complainant.

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Bill to Foreclose, Suit No. 2.

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, Annett-Mahnken Realty Company, a corporation of the State of New Jersey, respectfully shows: 30

1. On November 2, 1923, Betsey Gollin, being indebted to one John L. Dalrymple in the sum of three thousand dollars, with Max Gollin, her husband, executed to said John L. Dalrymple their bond of that date to secure that sum, payable on January 2, 1924, with interest at the rate of six per cent. per annum, payable annually, from the date of said bond.

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Bill to Foreclose, No. 2.

2. To secure payment of the bond, said Betsey Gollin and Max Gollin, her husband, executed to said John L. Dalrymple a mortgage of even date with said bond, and thereby conveyed to him in fee the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond; which mortgage, having been first duly acknowledged and the certificate of acknowledgment endorsed thereon, was recorded in Hudson County Register's office in Book 1193 of Mortgages for said County, page 517.

3. The mortgaged premises are described as follows:

All that certain tract, piece or parcel of land and premises, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, described as follows, which are known and distinguished on a "Map of the property belonging to E. C. Bramhall, situated in the City of Bayonne, surveyed and drawn by Smith & Eddy June 1880" as Lots #3 and #4, in plot #2 in Block #11 as laid down on said map, said lots fronting on the easterly side of Avenue C, distant one hundred and ninety (190) feet from the northerly side of West Thirty-third Street (formerly Bayonne Avenue) each of said lots being twenty-five (25) feet in width and one hundred and seventy-two and five tenths (172.5) feet in depth on each side.

4. By written assignment dated January 2, 1925, said mortgagee assigned said bond and mortgage to Myrtle A. Reed, which assignment

Bill to Foreclose, No. 2.

has not been recorded, but is in the possession of complainant.

5. By written assignment dated July 20, 1925, said Myrtle A. Reed assigned said bond and mortgage to complainant, which assignment has not been recorded, but is in the possession of complainant. 10

6. On May 8, 1924, James Brady's Sons Co., a corporation of the State of New Jersey, entered a judgment in the Hudson County Circuit Court against Betsey Gollin and others for the sum of \$2,678.77 damages and costs, which judgment is entered in Liber 35 of Circuit Court Judgments, page 199.

7. By written assignment dated June 24, 1924, said James Brady's Sons Co. assigned said judgment to Mildred J. Smith, which said assignment was recorded December 23, 1924, in Book 4 of Assignments of Judgments, page 66. 20

8. Any interest which said Mildred J. Smith has in said judgment is subsequent to complainant's mortgage.

8. Said mortgage by its terms is overdue, and complainant has elected that the whole of said principal sum, together with interest thereon shall be immediately payable. 30

9. Said Betsey Gollin and Max Gollin, her husband, have always been in possession of the mortgaged premises.

10. The whole of said principal sum, with interest thereon from November 2, 1924, remains due upon complainant's bond and mortgage.

Bill to Foreclose, No. 2.

Complainant is without adequate remedy at law and therefore prays:

1. That Betsey Gollin and Max Gollin, her husband, and Mildred J. Smith, who are the defendants to this suit, may answer this bill of complaint without oath, and each statement
10 therein made.

2. That an account may be taken of the amount due on complainant's mortgage.

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interest and costs by a short day, to be appointed by this Court, and that in default of such payment they and each of them be debarred and foreclosed of all equity of re-
20 demption in said lands; or

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on its mortgage, with interest and costs.

5. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

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CARRICK & WORTENDYKE,
Solicitors and of Counsel with Complainant.

*Bill to Foreclose, No. 3.***Bill to Foreclose, Suit No. 3.**

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, Annett-Mahnken Realty Company, a corporation of the State of New Jersey, respectfully shows: 10

1. On December 11, 1923, Betsey Gollin, being indebted to Kay-Bee Investment Co., a corporation of the State of New Jersey, in the sum of eleven thousand dollars, with Max Gollin, her husband, executed to said Kay-Bee Investment Co. their bond of that date to secure that sum, payable on March 11, 1924, with interest at the rate of six per cent. per annum, to be paid at the maturity of said bond, and to be computed from its date. 20

2. To secure payment of the bond, said Betsey Gollin and Max Gollin, her husband, executed to said Kay-Bee Investment Co. a mortgage of even date with said bond, and thereby conveyed to said corporation in fee the land hereinafter described, on the express condition that such conveyance should be void of payment should be made according to the terms of the bond; which mortgage having been first duly acknowledged, and the certificate of acknowledgment endorsed thereon, was recorded in Hudson County Register's office in Book 1206 of Mortgages for said County, page 357. 30

3. The mortgaged premises are described as follows:

All that tract or parcel of land and premises hereinafter particularly described, situate, lying 40

Bill to Foreclose, No. 3.

and being in the City of Bayonne, in the County of Hudson and State of New Jersey.

FIRST TRACT:

10 BEGINNING at the intersection of the northerly line of West Thirty-fourth Street with the easterly line of the Hudson Boulevard; thence running (1) easterly along the northerly side of West Thirty-fourth Street, eighty-two and five-tenths feet (82.5); thence (2) Northerly and parallel with the Hudson Boulevard, eighty-seven and five tenths (87.5) feet; thence (3) westerly and parallel with West Thirty-fourth Street, eighty-two and five tenths (82.5) feet to the easterly side of the Hudson Boulevard; thence (4) Southerly along the same eighty-seven and five tenths (87.5) feet to the point or place of
20 beginning.

SECOND TRACT:

BEGINNING at a point at the intersection of the westerly side of Broadway and the northerly side of West 10th Street; thence running (1) westerly and parallel with West 10th Street, one hundred feet (100) feet to a point; thence (2) northerly and parallel with Broadway twenty-five (25) feet to a point; thence (3) easterly and
30 parallel with West 10th Street, one hundred feet to a point; and thence (4) southerly parallel with Broadway, twenty-five (25) feet to the point or place of beginning.

THIRD TRACT:

BEGINNING at a point on the westerly side of the Hudson County Boulevard, distant thereon thirty-four (34) feet southerly from the southerly side of West Nineteenth Street; thence running (1) westerly parallel with West Nineteenth
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Bill to Foreclose, No. 3.

Street, ninety-six and forty-nine hundredths (96.49) feet; thence running (2) southerly parallel with the Hudson County Boulevard, thirty-two (32) feet; thence running (3) easterly parallel with West Nineteenth Street, ninety-six and seventy-four hundredths (96.74) feet to the said side of Hudson County Boulevard; and thence (4) northerly and parallel with the Hudson County Boulevard, thirty-two and one hundredth (32.01) feet to the point or place of beginning. 10

4. By written assignment dated December 22, 1923, said Kay-Bee Investment Co. assigned an undivided one-half interest in said bond and mortgage to Lena Haber, which said assignment was recorded in Hudson County Register's office in Book 149 of Assignments of Mortgage for said County, page 360. 20

5. By written assignment dated June 14, 1924, said Kay-Bee Investment Co. and Lena Haber assigned said bond and mortgage to Mildred J. Smith, which assignment is recorded in Hudson County Register's office in Book 154 of Assignments of Mortgage for said County, page 180. 20

6. By written assignment dated June 24, 1924, said Mildred J. Smith assigned said bond and mortgage to Annett-Mahnken Realty Company, the complainant herein, which assignment has not been recorded, but is in the possession of the complainant. 30

7. On January 7, 1924, Betsey Gollin and Max Gollin, her husband, mortgaged said land to Kay-Bee Investment Company for \$4,000.00, which mortgage was on January 18, 1924, recorded in Hudson County Register's office in Book 1206 of Mortgages, page 523. Said mortgage includes in addition to the premises above described a strip of land eight and one-half feet 40

Bill to Foreclose, No. 3.

in width by twenty-five feet in depth, running along the rear of the second tract above set out. The second tract of land in said mortgage is therefore described as follows:

SECOND TRACT:

10 BEGINNING at the point formed by the intersection of the westerly side of Broadway, with the northerly side of West 10th Street; thence running (1) northerly along the westerly side of Broadway twenty-five feet; thence (2) westerly parallel with West 10th Street one hundred eight feet and five tenths of a foot; thence (3) southerly parallel with Broadway twenty-five feet to the northerly side of West Tenth Street; and thence (4) easterly along the same one hundred eight feet and five tenths of a foot to
20 the point or place of beginning.

The third tract of land above set out is described in said mortgage with certain minor inaccuracies.

8. By written assignment dated June 14, 1924, said Kay-Bee Investment Co. assigned said bond and mortgage to Mildred J. Smith, which assignment was recorded in the Register's office of Hudson County in Book 154 of Assignments of Mortgages for said County, page 182.
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9. By written assignment dated June 24, 1924, said Mildred J. Smith assigned said bond and mortgage to complainant, which assignment has not been recorded, but is in the possession of complainant.

10. On May 8, 1924, James Brady's Sons Co., a corporation of the State of New Jersey, entered a judgment in the Hudson County Circuit Court against Betsey Gollin and others, for the sum of \$2,678.77, damages and costs, which judg-
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Bill to Foreclose, No. 3.

ment is entered in Liber 35 of Circuit Court Judgments, page 199.

11. By written assignment dated June 24, 1924, said James Brady's Sons Co. assigned said judgment to Mildred J. Smith, which said assignment was recorded December 23, 1924, in Book 4 of Assignments of Judgments, page 66.

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Any interest which said Mildred J. Smith has in said judgment is subsequent to complainant's mortgage.

12. Said mortgages by their terms are overdue, and complainant has elected that the whole of the principal sums due thereon, together with interest, shall be immediately payable.

13. Said Betsey Gollin and Max Gollin, her husband, have always been in possession of the mortgaged premises.

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14. The whole of said principal sums is due on each of said mortgages, with interest on the mortgage set forth in paragraph 2 of this bill from June 11, 1924, and interest on the mortgage set forth in paragraph 7 of this bill from July 7, 1924.

Complainant is without adequate remedy at law and therefore prays:

1. That Betsey Gollin and Max Gollin, her husband, and Mildred J. Smith, who are the defendants to this suit, may answer this bill of complaint without oath, and each statement therein made.

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2. That an account may be taken of the amount due on complainant's mortgage.

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interest and costs by a short

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Bill to Foreclose, No. 3.

day, to be appointed by this Court, and that in default of such payment, they and each of them be debarred and foreclosed of all equity of redemption in said lands; or

10 4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on its mortgage, with interest and costs.

5. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

CARRICK & WORTENDYKE,
Solicitors and of Counsel with Complainant.

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Final Decree, No. 1.

Final Decree, Suit No. 1.

Filed January 11, 1926.

IN CHANCERY OF NEW JERSEY.

Between

ANNETT-MAHNKEN REALTY
COMPANY, a corporation of
New Jersey,

Complainant,

and

BETSEY GOLLIN and others,

Defendants.

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No. 1.

*On Bill to
Foreclose,
&c.*

This cause coming on to be heard in the pres-
ence of Carrick & Wortendyke, solicitors and of
counsel with the complainant, the complainant's
bill having been heretofore taken as confessed
against Betsey Gollin and Max Gollin, her hus-
band, and Mildred J. Smith, being all of the de-
fendants, whereupon and upon reading a report
on file, made by Frank W. Hastings, Jr.,
Esquire, one of the masters of this Court, bear-
ing date on the twenty-first day of December,
in the year of our Lord one thousand nine hun-
dred and twenty-five, from all of which it ap-
pears that there was due to the complainant on
the day of making of the said report, for prin-
cipal and interest on its mortgage, the sum of
thirty-six hundred and eighty-five dollars and
thirty-three cents, and to the defendant, Mildred
J. Smith, on her judgment, the sum of twenty-
nine hundred thirty-nine dollars and six cents;
that the same premises are comprised in the re-
spective mortgages of the complainant and last

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Final Decree, No. 1.

10 aforesaid defendant, and that the mortgage of complainant is first in registry and execution, and is entitled to priority of payment; and that the judgment of defendant, Mildred J. Smith, is second in registry and execution, and is entitled to be secondly paid; and that it is necessary and advisable that the whole of the mortgage premises should be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary.

20 It is, thereupon, on this eleventh day of January, in the year of our Lord one thousand nine hundred twenty-six, by Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE and DECREE that the said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant and defendant; that is to say, in the first place to the complainant the aforesaid sum of thirty-six hundred and eighty-five dollars and thirty-three cents and interest thereon, to be
30 computed from the twenty-first day of December, in the year of our Lord one thousand nine hundred and twenty-five, being the date of the Master's report, with the complainant's costs in this cause to be taxed; and in the second place, to pay unto the defendant, Mildred J. Smith, the sum of twenty-nine hundred and thirty-nine and six-one-hundredths dollars, together with lawful interest thereon as aforesaid, with her costs to be taxed, and to the complainant a counsel fee of seventy-three and seventy-
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Final Decree, No. 1.

hundredths dollars, and that a writ of *feri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Hudson, commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale he pay, in the first place, to the complainant or to its solicitor, said debt, interest and costs; and in the second place to the aforesaid defendant, Mildred J. Smith, or to her solicitor said debt, interest and costs, in manner aforesaid, and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court, to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

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And it is further ORDERED, ADJUDGED and DECREED, that the defendant stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

E. R. WALKER,

C. 30

Final Decree, No. 2.

Final Decree, Suit No. 2.

Filed January 11, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ANNETT-MAHNKEN REALTY COMPANY, a corporation of New Jersey,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BETSEY GOLLIN and others,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p><i>No. 2.</i></p> <p><i>On Bill</i> <i>to Foreclose,</i> <i>&c.</i></p>
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20 This cause coming on to be heard in the presence of Carrick & Wortendyke, solicitors and of counsel with the complainant, the complainant's bill having been heretofore taken as confessed against Betsey Gollin and Max Gollin, her husband, and Mildred J. Smith, all of the defendants, whereupon, and upon reading a report on file, made by Frank W. Hastings, Jr., Esquire, one of the Masters of this Court, bearing date on the twenty-first day of December, in the year

30 of our Lord one thousand nine hundred and twenty-five, from all which it appears that there was due to the complainant on the day of making of the said report, for principal and interest on its mortgage, the sum of thirty-three hundred and eighty-four dollars and fifty cents, and to the defendant, Mildred J. Smith, the sum of twenty-nine hundred thirty-nine dollars and six cents; that the same premises are comprised in the respective mortgages of the complainant and

40 last aforesaid defendant, and that the mortgage

Final Decree, No. 2.

of complainant is first in registry and execution, and is entitled to priority of payment; and that the judgment of said Mildred J. Smith, defendant, is second in registry and execution, and is entitled to be secondly paid; and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary, 10

It is, thereupon, on this eleventh day of January, in the year of our Lord one thousand nine hundred twenty-six, by Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE and DECREE that the said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant and defendant; that is to say, in the first place to the complainant the aforesaid sum of thirty-three hundred eighty-four dollars and fifty cents, and interest thereon, to be computed from the twenty-first day of December, in the year of our Lord one thousand nine hundred and twenty-five, being the date of the Master's report, with the complainant's costs in this cause to be taxed; and in the second place, to pay unto the defendant, Mildred J. Smith, the sum of twenty-nine hundred thirty-nine dollars and six cents, together with lawful interest thereon as aforesaid, with her costs to be taxed, and to the complainant a counsel fee of sixty-seven and sixty-eight-hundredths dollars, and that a writ of *feri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of 20
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Final Decree, No. 2.

10 Hudson, commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale he pay, in the first place, to the complainant or to its solicitor, said debt, interest and costs; and in the second place to the aforesaid defendant, Mildred J. Smith, said debt, interest and costs, in manner aforesaid, or to her solicitors, and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court, to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

20 And it is further ORDERED, ADJUDGED and DECREED, that the defendant stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

E. R. WALKER,
C.

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Final Decree, No. 3.

Final Decree, Suit No. 3.

Filed January 11, 1926.

IN CHANCERY OF NEW JERSEY.

Between

ANNETT-MAHNKEN REALTY
COMPANY, a corporation of
New Jersey,

Complainant,

and

BETSEY GOLLIN and others,

Defendants.

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No. 3.

*On Bill to
Foreclose,
&c.*

This cause coming on to be heard in the presence of Carrick & Wortendyke, solicitors and of counsel with the complainant, the complainant's bill having been heretofore taken as confessed against Betsey Gollin and Max Gollin, her husband, and Mildred J. Smith, all of the defendants, whereupon, and upon reading a report on file, made by Frank W. Hastings, Jr., Esquire, one of the Masters of this Court, bearing date on the twenty-first day of December, in the year of our Lord one thousand nine hundred and twenty-five, from all which it appears that there was due to the complainant on the day of making of the said report, for principal and interest on its mortgages, the sum of sixteen thousand eight hundred and seven dollars, and to the defendant, Mildred J. Smith, the sum of twenty-nine hundred thirty-nine dollars and six cents; that the same premises are comprised in the respective mortgages of the complainant and last aforesaid defendant, and that the mortgage of complainant

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Final Decree, No. 3.

is first in registry and execution, and it entitled to priority of payment; and that the judgment of said Mildred J. Smith, defendant, is second in registry and execution, and is entitled to be secondly paid; and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary,

10 It is, thereupon, on this eleventh day of January, in the year of our Lord one thousand nine hundred twenty-six, by Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE and DECREE that the said report, and all the
20 matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant and defendant; that it to say, in the first place to the complainant the aforesaid sum of sixteen thousand eight hundred and seven dollars and ninety-nine cents, and interest thereon, to be computed from the twenty-first
30 day of December, in the year of our Lord one thousand nine hundred and twenty-five, being the date of the Master's report, with the complainant's costs in this cause to be taxed; and in the second place, to pay unto the defendant, Mildred J. Smith, the sum of twenty-nine hundred thirty-nine dollars and six cents, together with lawful interest thereon as aforesaid, with her costs to be taxed, and to the complainant a counsel fee of one hundred eighty-four dollars, and that a writ of *feri facias* do issue for that
40 purpose out of this Court, directed to the Sheriff

Final Decree, No. 3.

of the County of Hudson, commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale he pay, in the first place, to the complainant or to its solicitor said debt, interest and costs; and in the second place to the aforesaid defendant, Mildred J. Smith, her said debt, interest and costs, in manner aforesaid, or to her solicitors, and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court, to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ. 10

And it is further ORDERED, ADJUDGED and DECREED, that the defendant stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree. 20

E. R. WALKER,
C.

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Report of Sale, No. 1.

Report of Sale, Suit No. 1.

Filed May 3, 1926.

IN CHANCERY OF NEW JERSEY.

10 *Between*

ANNETT-MAHNKEN REALTY
COMPANY, a corp. of N. J.,
Complainant,

and

BETSEY GOLLIN and MAX GOL-
LIN, her husband, and MIL-
DRED J. SMITH,
Defendants.

No. 1.
Fi. Fa. for
Sale of
Mortgaged
Premises.

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To his Honor Edwin R. Walker, Chancellor of
the State of New Jersey:

I, JOHN M. HANNAN, Sheriff of the County of
Hudson, do hereby respectfully report that I
did, on the 29th day of April, 1926, sell at public
vendue, at Court House, Jersey City (having
first duly advertised the same) the lands and
premises described in the writ of execution
30 issued to me in the above-stated cause, to An-
nett-Mahnken Realty Company, a corporation
of New Jersey, for the sum of three thousand
(\$3,000.00) dollars, it being the highest bidder
therefor.

Respectfully submitted this 29th day of April,
1926.

JOHN M. HANNAN,
Sheriff.

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Report of Sale, No. 1.

STATE OF NEW JERSEY, }
 HUDSON COUNTY. } ss.

JOHN M. HANNAN, Sheriff of the County of Hudson, State of New Jersey, being duly sworn according to law, on his oath says, that the mortgaged premises mentioned and referred to in the foregoing report, were duly sold by me for the highest and best price the same would bring in cash at the time of sale. 10

JOHN M. HANNAN,
 Sheriff.

Sworn and subscribed before me this
 29th day of April, A. D. 1926.

THOMAS ENRIGHT,
 Notary Public, N. J.

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*Order Confirming Sheriff's Sale, No. 1.***Order Confirming Sheriff's Sale, Suit No. 1.**

Filed May 10, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ANNETT-MAHNKEN REALTY COMPANY, a corporation of New Jersey,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BETSEY GOLLIN and others,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p style="font-size: 3em;">}</p> <p>58-609. No. 1. <i>On Bill to Foreclose.</i></p>
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20 Upon reading and filing the report of John M. Hannan, Esquire, Sheriff of the County of Hudson, whereby it appears that on the 29th day of April, one thousand nine hundred and twenty-six, he made sale according to law of the mortgaged premises, described in the writ of *feri facias* issued in this cause, after due and lawful notice and advertisement, by public vendue, to Annett-Mahnken Realty Company, a corporation of the State of New Jersey, for the

30 sum of three thousand dollars, that being the highest bid therefor; and upon reading and filing the affidavit of the said Sheriff, whereby it further appears that the said property was sold at the highest and best price the same would then bring in cash, and no cause being shown or appearing to the contrary,

40 It Is, on this tenth day of May, one thousand nine hundred and twenty-six, on motion of Carrick & Wortendyke, solicitors of the said complainant, ORDERED, that said sale be, and the

Order Confirming Sheriff's Sale, No. 1.

same hereby is, RATIFIED and CONFIRMED, as valid and effectual in law; and the said Sheriff is hereby directed to execute a good and sufficient conveyance, in law, to the said purchaser or its assigns, for the mortgaged premises so sold as aforesaid.

E. R. WALKER, 10
C.

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Report of Sale, No. 2.

Report of Sale, Suit No. 2.

Filed May 3, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ANNETT - MAHNKEN REALTY COMPANY, a corp. of N. J., <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BETSEY GOLLIN and MAX GOL- LIN, her husband, and MIL- DRED J. SMITH, <i>Defendants.</i></p>	<p>No. 2.</p> <p><i>Fi. Fa. for</i> <i>Sale of</i> <i>Mortgaged</i> <i>Premises.</i></p>
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20 To his Honor Edwin R. Walker, Chancellor of
the State of New Jersey:

I, JOHN M. HANNAN, Sheriff of the County of
Hudson, do hereby respectfully report that I did,
on the 29th day of April, 1926, sell at public
vendue, at Court House, Jersey City (having
first duly advertised the same) the lands and
premises described in the writ of execution
issued to me in the above-stated cause, to An-
nett-Mahnken Realty Company, a corporation
of New Jersey, for the sum of five thousand
(\$5,000.00) dollars, it being the highest bidder
therefor.

Respectfully submitted this 29th day of April,
1926.

JOHN M. HANNAN,
Sheriff.

Report of Sale, No. 2.

STATE OF NEW JERSEY, }
 HUDSON COUNTY. } ss.

JOHN M. HANNAN, Sheriff of the County of Hudson, State of New Jersey, being duly sworn according to law, on his oath says, that the mortgaged premises mentioned and referred to in the foregoing report were duly sold by me for the highest and best price the same would bring in cash at the time of sale. 10

JOHN M. HANNAN,
 Sheriff.

Sworn and subscribed before me this
 29th day of April, A. D. 1926.

THOMAS ENRIGHT,
 Notary Public, N. J.

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*Order Confirming Sheriff's Sale, No. 2.***Order Confirming Sheriff's Sale, Suit No. 2.**

Filed May 10, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ANNETT - MAHNKEN REALTY COMPANY, a corporation of New Jersey,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BETSEY GOLLIN and others,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p style="font-size: 3em;">}</p> <p>56-610. No. 2. <i>On Bill to Foreclose.</i></p>
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20 Upon reading and filing the report of John M. Hannan, Esquire, Sheriff of the County of Hudson, whereby it appears that on the 29th day of April, one thousand nine hundred and twenty-six, he made sale according to law of the mortgaged premises, described in the writ of *fieri facias* issued in this cause, after due and lawful notice and advertisement, by public vendue, to Annett-Mahnken Realty Company, a corporation of the State of New Jersey, for the sum

30 of five thousand dollars, that being the highest bid therefor; and upon reading and filing the affidavit of the said Sheriff, whereby it further appears that the said property was sold at the highest and best price the same would then bring in cash, and no cause being shown or appearing to the contrary,

40 It Is, on this tenth day of May, one thousand nine hundred and twenty-six, on motion of Carrick & Wortendyke, solicitors of the said complainant, ORDERED, that said sale be, and the

Report of Sale, No. 3.

same hereby is, RATIFIED and CONFIRMED, as valid and effectual in law; and the said Sheriff is hereby directed to execute a good and sufficient conveyance in law to the said purchaser or its assigns for the mortgaged premises so sold as aforesaid.

E. R. WALKER, 10
C.

Report of Sale, Suit No. 3.

Filed May 3, 1926.

IN CHANCERY OF NEW JERSEY.

Between

ANNETT - MAHNKEN REALTY
COMPANY, a corp. of N. J.,
Complainant,

and

BETSEY GOLLIN and MAX GOL-
LIN, her husband, and MIL-
DRED J. SMITH,
Defendants.

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*No. 3.
Fi. Fa. for
Sale of
Mortgaged
Premises.*

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To his Honor Edwin R. Walker, Chancellor of
the State of New Jersey:

I, JOHN M. HANNAN, Sheriff of the County of
Hudson, do hereby respectfully report that I did,
on the 29th day of April, 1926, sell at public
vendue, at Court House, Jersey City (having
first duly advertised the same) the lands and
premises described in the writ of execution
issued to me in the above-stated cause, to An- 40

Report of Sale, No. 3.

nett-Mahnken Realty Company, a corporation of New Jersey, for the sum of 2nd tract, \$8,000.00; 3rd tract, \$5,000 (making in the aggregate the sum of thirteen thousand (\$13,000.00) dollars, it being the highest bidder therefor.

10 Respectfully submitted this 29th day of April, 1926.

JOHN M. HANNAN,
Sheriff.

STATE OF NEW JERSEY, }
HUDSON COUNTY. } ss.

20 JOHN M. HANNAN, Sheriff of the County of Hudson, State of New Jersey, being duly sworn according to law, on his oath says, that the mortgaged premises mentioned and referred to in the foregoing report, were duly sold by me for the highest and best price the same would bring in cash at the time of sale.

JOHN M. HANNAN,
Sheriff.

30 Sworn and subscribed before me this 29th day of April, A. D. 1926.

THOMAS ENRIGHT,
Notary Public of N. J.

Order Confirming Sheriff's Sale, No. 3.

Order Confirming Sheriff's Sale, Suit No. 3.

Filed May 10, 1926.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>ANNETT - MAHNKEN REALTY COMPANY, a corporation of New Jersey, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>BETSEY GOLLIN and others, <i>Defendants.</i></p>	}	<p>58-611. No. 3. <i>On Bill to Foreclose.</i></p>	<p>10</p>
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Upon reading and filing the report of John M. Hannan, Esquire, Sheriff of the County of Hudson, whereby it appears that on the 29th day of April, one thousand nine hundred and twenty-six, he made sale according to law of the second parcel of the mortgaged premises, described in the writ of *feri facias* issued in this cause, after due and lawful notice and advertisement, by public vendue, to Annett-Mahnken Realty Company, a corporation of the State of New Jersey, for the sum of eight thousand dollars, that being the highest bid therefor, and that he made sale according to law of the third parcel of the mortgaged premises described in the writ above mentioned, after due and lawful notice as aforesaid, to said Annett-Mahnken Realty Company, a corporation of the State of New Jersey, for the sum of five thousand dollars, that being the highest bid therefor; the first parcel of said mortgaged premises described in the writ not having been exposed to sale; and upon reading

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Order Confirming Sheriff's Sale, No. 3.

and filing the affidavit of said Sheriff, whereby it further appears that the said property was sold at the highest and best price the same would then bring in cash, and no cause being shown or appearing to the contrary,

10 It Is, on this tenth day of May, one thousand nine hundred and twenty-six, on motion of Car-
rick & Wortendyke, solicitors of the said com-
plainant, ORDERED, that said sale be, and the
same hereby is, RATIFIED and CONFIRMED, as
valid and effectual in law; and the said Sheriff
is hereby directed to execute a good and suffi-
cient conveyance in law to the said purchaser or
to its assigns for the mortgaged premises so sold
as aforesaid.

E. R. WALKER,
C.

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New Jersey Court of Errors and Appeals

ANNETT-MAHNKEN REALTY COM-
PANY, a corporation of New
Jersey,

Complainant-Appellee,

and

BETSEY GOLLIN, *et als.*,

Defendants-Appellants.

*On Bill to
Foreclose.*

*On Petition,
&c.*

*On Appeal
from Court of
Chancery.*

BRIEF FOR DEFENDANTS-APPELLANTS.

Facts.

In 1923, Irving Gollin, being the owner of a plot of ground known as 880 Boulevard, in the City of Bayonne, County of Hudson, erected on said plot a large apartment house, and running short of funds during the course of construction, he arranged to borrow money by giving as security mortgages on property owned by his mother, Betsey Gollin, the defendant-appellant, at 249 Broadway, and 501 Boulevard, in said City of Bayonne, and a mortgage on 772 Avenue C, in said City of Bayonne, and in order to have the mortgagees accept said mortgages he conveyed his said apartment house and lands to his mother, Betsey Gollin.

After Irving Gollin had exhausted all the funds raised on the security of the property of his mother, he was still indebted to other creditors, and he, and his parents, applied to Horace Roberson, Esq., for a loan of sufficient moneys to pay off all of his creditors, and to discharge the mortgage loans procured on the security of the other property of his parents, which they had accumulated during a lifetime's work, and of-

ferred to secure such a loan by a mortgage on the said Boulevard apartment house. Said Roberson agreed to endeavor to procure such a loan, and did procure it, but instead of a mortgage, a deed was given by the defendants to the Annett-Mahnken Realty Company, for the moneys advanced and to be advanced by said Company, and a Trust Agreement entered into, which Trust Agreement is printed in full on pages 11-14 of the Case. In and by the provisions of the third paragraph of said Trust Agreement, the said Annett-Mahnken Realty Company, the complainant herein, bound itself "to endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sum or sums of money as may be necessary for the settlement of all such claims"; and in and by the fourth paragraph of said Trust Agreement, compensation for the services of the complainant is provided, and also the provision "that said Company is to receive a just and reasonable compensation for procuring loans for all moneys advanced in the settlement of said claims and is to receive lawful interest upon all moneys invested in said property."

Pursuant to the arrangement made at the time of the conveyance to the complainant, and the Trust Agreement, on May 16, 1924, the complainant did pay the indebtedness secured by the mortgages on the other property of Betsey Gollin above described, as well as some judgments against Irving Gollin, but instead of cancelling said mortgages and judgments, and keeping the apartment house property as security for said advances, as was contemplated in, and provided for, by the said Trust Agreement, the complainant took assignments of said mort-

gages, and then began the foreclosure proceedings on said mortgages, which are set up in the State of the Case.

Through misapprehension of the rights of the defendants, and misunderstandings between the defendants and the counsel they employed to defend them against said foreclosure suits, no answers were filed and decrees went against the defendants, by default, and upon application on the petition appearing on pages 1-10 of the Case, Vice-Chancellor Fielder refused to open the decrees and permit the defendants to interpose a defense. This appeal is taken from that refusal and the refusal upon the further application made on the 7th day of June, 1926, when the further evidence was offered that in the statement issued by the complainant as to the moneys it had paid out, and would still be required to pay out, the very items which are the subject of the foreclosure suits appeared. (See Case, paragraph 19, on pp. 53-54.)

The complainant continued with its foreclosure proceedings, and bought in the property itself, at the Sheriff's sale, leaving a large deficiency, so that there are no intervening equities, and no one would be harmed if the decrees were opened, and defendants permitted to assert their defense, and try out the issue as to whether or not the complainant had a right to foreclose, or should have cancelled said mortgages.

ARGUMENT.

There can be little or no doubt but that the defendants have a perfectly good defense to the rights of the complainant to foreclose said mortgages, and that if the defendants had interposed an answer and asked by way of affirmative relief or cross-bill to have said mortgages cancelled, they would have prevailed, for the following reasons:

First: It affirmatively appears in the Trust Agreement by the provisions of the third and fourth paragraphs quoted above, that the complainant was to advance the very moneys in question, and reimburse itself out of the proceeds of the sale, as well as out of the rents of the apartment house building, title to which it held, and still holds, for that very purpose.

Second: If the complainant was not required to do that, why did the complainant pay the holders of said mortgages, and said judgment, and take assignments? There was no necessity for so doing. These defendants were at the mercy of the mortgagees, and made the conveyance of the completed apartment house property, for the purpose of relieving and saving their other property. If this were not so, what difference could it possibly make to the defendants, whether the original mortgagees foreclosed, or whether the complainant, as assignee, foreclosed? If this were not so, why did Mr. Robertson, himself, in his own handwriting, as set up in paragraph 19, on page 54, add to the typewritten items of the statement of the moneys advanced, and to be advanced by the complainant, the \$3,200 mortgage and the \$2,700 judgment?

Defendants therefore respectfully submit, that as to the merits of a defense, they have shown clearly by the documents themselves, and not by evidence depending upon anyone's recollection, which may be erroneous, that they have at least a defense, which they are entitled to have the Court go into on a final hearing.

As to the element of surprise, while the record is not so clear, or one sided, as it is on the merits, it nevertheless does appear that when the defendants were served with a subpoena they took the same to Mr. Dembe, and supposed that he had filed an answer and when informed that the property was advertised for sale, they went to Mr. Cutley, to have him take care of the matter, and then learned that it had not been done, and they made the application to the Court of Chancery to open the Decree *Pro Confesso* and permit them to interpose their defense. The affidavits of Mr. Cutley and Mr. Dembe do entirely clear both Mr. Dembe and Mr. Cutley of any charge, or any implication, of negligence, but when taken in connection with the affidavits submitted by the defendants, and considering the fact that defendants are foreigners, illiterate, and while they speak English, do not thoroughly understand it, it can readily be seen that they did not intentionally neglect to defend against said foreclosures, but that the failure to interpose a timely defense was through misapprehension and misunderstanding. It is certainly apparent that the defendants did not neglect to attempt to defend, but at the most did not comprehend the situation sufficiently to give proper instructions to the attorneys engaged by them, and certainly did not comprehend what the attorneys told them was the situation.

Defendants respectfully appeal to the sound discretion of this Court, and urge that if they are not permitted to defend, and thus save the three pieces of property, which it took them a lifetime to accumulate, they are absolutely ruined, while, if they are permitted to defend, the complainant holds the apartment house property as security, and it passed upon the value of the apartment house property when it entered into the agreement, and considered it ample security, and also holds the other three properties, which were foreclosed. So that if defendants are permitted to defend, complainant is amply protected in its rights, and if a decree goes against complainant, it still has the security it originally bargained for; and if a decree is in favor of complainant, it certainly has lost nothing by giving the defendants the opportunity to defend.

Respectfully submitted,

PHILIP J. SCHOTLAND,
Attorney and Counsel for
Defendants-Appellants.

New Jersey Court of Errors and Appeals

Between

ANNETT-MAHNKEN REALTY COMPANY, a corporation of New Jersey,

Complainant-Respondent,

and

BETSEY GOLLIN and others,
Defendants-Appellants.

On Appeal
from Court
of Chancery.

BRIEF FOR RESPONDENT.

The Facts.

This appeal questions the legal propriety of Vice-Chancellor Fielder's refusal to grant a re-argument on defendants' application to open three foreclosure decrees, after final decree, sale, confirmation, and delivery of the deed to the complainant, who was the purchaser.

On July 31, 1925, the complainant filed three bills of foreclosure in the Court of Chancery against the appellants Betsey Gollin and Max Gollin, as owners of lands situate in Bayonne, the suits being distinguished in the titles as No. 1 (*p.* 68), No. 2 (*p.* 71) and No. 3 (*p.* 75) respectively. The appellants were served with process, and consulted Messrs. Dembe & Dembe, of Bayonne, who procured copies of the foreclosure bills from com-

plainant's solicitors and arranged for an extension of the time to answer (*p. 34, ll. 34-38*). Mr. Dembe examined the deed of trust which is the basis of the appellants' defense and advised Mrs. Gollin that she might sell the property, provided she paid to the complainant the amount due it (*p. 35, ll. 4, et seq.*). Before the time to answer expired, she told Mr. Dembe to do nothing further, that she had made other arrangements for handling the matter, and took back her papers. She was not charged by Mr. Dembe for his services (*p. 35, ll. 13, et seq.*). No answer having been filed, decrees pro confesso were entered, and after master's reports, final decrees were taken (*pp. 81, 84, 87*), executions issued, and the property advertised for sale by the Sheriff of Hudson. Then the appellants consulted Mr. Cutley, of Jersey City, who advised them, contrary to the contention now made by their present counsel, that the deed of trust did not require the complainant to pay the mortgages (*p. 37, ll. 23, et seq.*). Mr. Cutley thought the appellants had made arrangements to bid at the sale, received no fee, and was surprised when he learned that a third set of solicitors had been engaged to stay the Sheriff's sale. No fee was paid to Mr. Cutley.

On April 26, 1926, on the petition and affidavits prepared and sponsored by Heyman & Heyman, of Jersey City, and answering affidavits set out in the present state of the case, (*pp. 1-50*) and after hearing counsel, the order to show cause was discharged, and the stay restraining the sheriff's sale was vacated (*pp. 51-52*). The property under foreclosure was sold to the complainant, the highest bidder, on April 29, 1926 (*pp. 90, 94, 97*). The sales were confirmed by orders entered May 10, 1926 (*pp. 92, 96 and 99*). At the sales the appellants were represented by a fourth attorney, Charles H. Abramson, of Bayonne, at whose in-

stance the complainant gave an agreement in writing (pp. 62 and 63) to permit the redemption of the property by the appellants within 30 days, if it should be purchased by the complainant (pp. 59 and 61). The property was not redeemed under this option, and the appellants' present solicitor (their fifth), of Newark, gave notice for June 1st, 1926, of an application for a re-argument and for leave to amend the petition (pp. 53, 55). The application was denied by order advised June 7, 1926 (p. 64). The appeal is from both orders, April 26 and June 7, 1926. While the notice of the appeal from the former order is outside of the time limited by the statute (1 *Cum. Sup.* 270, title "*Chancery*"), no point is made of this by the respondent, as in order to decide whether the later order is erroneous this court should have the entire record before it.

POINT I.

The appellants' application for a re-argument is without merit.

The affidavits upon which the original application to open the final decrees and permit the filing of answer was based, were replete with loose charges of deception and fraud on the part of the respondent and its attorney. The petition, even more baldly, carried these serious and offensive complaints. They were so fully met by the answering affidavits, and were in themselves so visionary and preposterous that on the argument upon the return of the order to show cause before the Vice-Chancellor they were abandoned by the solicitors who then represented the appellants. Their present solicitor, in applying for a re-argument, expressly stated to the Vice-Chancellor that he was

satisfied that his clients had not been cheated or defrauded, but that in his view the terms of the trust agreement obliged the respondent to pay the mortgages upon the trust property, as well as upon other property of the appellants from their own funds, and take the chance of reimbursing itself from the sale of the trust property, if it should realize enough on sale. Counsel's brief is devoted to maintaining this thesis alone. It is therefore unnecessary to call to the court's attention the particulars of the answering affidavits, not only of the president of the respondent corporation and of its attorney, but also of the former counsel of the appellants, completely refuting the charges of fraud so profusely and groundlessly made. The question presented on this appeal therefore is whether the declaration of trust does, under any fair construction of its terms, impose upon the respondent such a burden as is claimed by the appellants.

The petition which the appellants presented to the Court of Chancery (*pp.* 1-10) alleges that certain investors to whom application was made refused to advance to their son Irving Gollin, who was then the owner of the trust property upon which an apartment house was in course of erection, additional money which he needed to continue with the construction, but that they made such advances when the property was conveyed by Irving Gollin to his mother Betsey Gollin, one of the appellants, who with her husband, executed the mortgages which afterward came to the respondent by assignment, and were foreclosed by it. The petition (*p.* 10, *par.* 5) alleges that the creditors of Irving Gollin began to press him for the payment of their claims, and he being unable to pay them, applied for a mortgage loan to Judge Roberson, who declined to make the loan, but agreed to take a deed for the apartment house property, which he

would hold in trust, "and receive and collect the rents, issues and profits thereof, and after the payment of all carrying charges thereon to apply any balance remaining in his hands to the payment of all of the encumbrances and debts then existing against the said premises, and the said Horace Roberson further agreed that he would endeavor to effect settlements with the creditors of Irving Gollin, and if necessary advance out of his own moneys such sums as might be required for the purpose of making such settlements, and that upon the repayment to him of the moneys so advanced, together with interest and compensation for his services, he would return to your petitioners the premises so conveyed to him." It will be observed that the appellants here allege an agreement to pay or effect settlement of the debts created in the course of the building of the apartment house. Nothing is said about paying the mortgages which the appellants had raised on their own obligations to assist their son in his building.

The declaration of trust (*pp.* 11, 14) sets out the following trusts:

"SECOND.—To pay out of said rents and profits, the interest due upon the mortgages that are liens upon said premises; to pay taxes, water rents, insurance premiums and for the necessary repairs and other expenses that are proper and incident to the management of said building.

THIRD.—To endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sum or sums of money as may be necessary for the settlement of all such claims."

It will be noted that in the trust secondly de-

clared the respondent's assumption concerning mortgages is only from the rents and profits to pay interest upon mortgages which were liens upon the trust property, and in the trust thirdly declared, is to "advance"—not pay—such money as might be required for the settlement of claims. So in the fourth paragraph (*p. 13, ll. 30, et seq.*) the respondent is to receive a just and reasonable compensation "for procuring loans for all moneys advanced in the settlement of said claims." And in the fifth clause (*p. 14, ll. 12, et seq.*) the respondent agrees to reconvey, on the completion of the trust, free from encumbrances "except such as may be necessary to pay said claims."

Appellant's counsel asks in his brief why the respondent purchased the mortgages which were afterwards foreclosed and the Smith judgment, if not required by the declaration of trust. This is answered in the record by Judge Roberson (*p. 41, l. 18, et seq.*), and by Mr. Annett, president of the respondent company (*p. 48, ll. 22, et seq.*) who state that foreclosure was being threatened by the lienors, and that the respondent purchased the claims to help the appellants with whom it had become involved through the acceptance of the trust relation. It is shown by the dates of the assignments that these mortgages were held about a year or more after they were acquired, before foreclosure was begun. The Markowitz mortgage (Case No. 1) was assigned to Judge Roberson September 9, 1924 (*p. 69, l. 33*). The James Brady & Son judgment was assigned to Mildred J. Smith for the respondent June 24, 1924 (*p. 70, l. 9*). The Dalrymple mortgage (Case No. 2) was assigned to Myrtle A. Reed for the respondent January 2, 1925 (*p. 72, l. 37*). The Kay-Bee Investment Company mortgages (Case No. 3) came to the respondent

ent through mesne assignments on June 24, 1924 (p. 77, l. 27; p. 78, l. 30). The foreclosure bills were all filed July 31, 1925.

Another rhetorical question of appellant's brief, at the foot of page 4, is founded upon his own proposed amendment to his petition, leave to make which was refused on his application to the Vice-Chancellor. It is not only not proved or established by affidavit, but it is not even in the record as an allegation of a pleading. It has absolutely no place as the basis of any argument.

It is to be observed that the matters here in controversy concern only the foreclosure of mortgages upon certain lands in Bayonne. When the trust is completed in the proper tribunal, the respondent is prepared to render an account of its administration of the trust property, at which time the appellants will have full opportunity to question every act of their trustee.

It is submitted that there is no sufficient ground upon which the action of the Vice-Chancellor, in denying the applications to open the decrees, and to permit a re-argument, should be reversed. The established rule in the Court of Chancery has been that the court will not set aside the conclusions of a master upon the evidence, unless he is clearly wrong.

Clark v. Condit, 21 N. J. Eq. (6 C. E. Gr.), 322 (1871, Zabriskie, Ch.)

The conclusion of the learned Vice-Chancellor upon the evidence before him, in the exercise of his judicial discretion should have at least equal consideration. It is true that the witnesses were not orally in the presence of the court, in which conjuncture there would be even greater reluctance to disturb the findings below. But the Vice-

Chancellor, who dealt with the application unquestionably was informed of the position and standing of some of the witnesses through his long residence in Hudson County, and his extensive experience at the bar and on the bench, so that he was not wholly confined, as an appellate tribunal necessarily must be, to the dead language of the printed record.

Cartan v. Phelps, 91 N. J. Eq. (6 B. Stock.), 312 (1919, E. & A., Trenchard, J.);

Mackie v. Cain, 92 N. J. Eq. (7 B. Stock.), 631 (1921, E. & A., Gummere, C. J.).

POINT II.

Appellants' neglect to assert any defence which they might have has been so wilful and flagrant that they should not now be heard to disturb the respondent's rights in the property foreclosed.

Counsel's brief modestly admits that the element of surprise in his clients' case is not "so clear or one sided", as is their claim to a meritorious defence. He might well have gone further and conceded that surprise is wholly absent. It is evident from the affidavits of the attorneys whom they consulted, which are in the present record, that they filed no answers because they were properly advised by competent counsel that they had no defence. After service of subpoena they went promptly to Mr. Dembe, who obtained copies of the foreclosure bills and examined the respondent's declaration of trust. He advised the appellant that she had a right to negotiate a sale of the trust

property, provided she should pay the respondent the moneys advanced and due under the declaration of trust (*pp.* 34, 35). He procured an extension of the time to answer, so as to carry him over the vacation season, sent for Mrs. Gollin, and at her instance returned to her the papers, in ample time for her to consult other counsel if she had chosen to do so. Despite the fact that Mr. Dembe made no charge for his examination of the papers and opinion, Mrs. Gollin, although she admits that Mr. Dembe gave her back her papers, in her affidavit says she did not know that no answer had been filed (*p.* 25, *ll.* 25, *et seq.*).

Mr. Gollin corroborates his wife (*p.* 20, *ll.* 30, *et seq.*) and adds that although Mr. Dembe had given back the papers to his wife, they thought the matter was being taken care of, "but later learned that no answer had been filed, and that a decree in foreclosure had been entered and that the sheriff had advertised the property for sale."

It would seem that the conclusions of Vice-Chancellor Fielder as to the weight to be given to these statements is of some value.

Then they went to Mr. Cutley, who, according to the Gollins' story, promised to take care of the matter and endeavor to have the decrees in foreclosure opened, but he, too, took no action (*p.* 21, *ll.* 5, *et seq.*; *p.* 26, *ll.* 3, *et seq.*). Mr. Cutley swears (*p.* 36, *ll.* 33, *et seq.*) that he advised the Gollins that the sales could only be averted by payment of the mortgages, they figured out what would be needed to take care of the mortgages and liens, and Irving Gollin agreed to have a bidder ready at the sale which was to be held April 8th. Mr. Cutley advised them that the terms of the trust agreement did not mean that the trustee should clear the property of mortgages—merely to pay

general creditors and interest on the mortgages out of the rents and profits of the property. Mr. Cutley adds (*p. 37, l. 31*):

“The action of the Gollins in applying in this cause for a stay, through Messrs. Heyman & Heyman, was a complete surprise to me, as I was informed by Irving Gollin on the previous day, in the presence of Mr. Enright, that he had someone who was going to bid in at the sale, and he expressed himself as very much satisfied that the matter could be adjusted through a foreclosure sale.”

Mr. Cutley, like Mr. Dembe, was un-feed.

Then came the application of Messrs. Heyman & Heyman, charging the respondent and Judge Roberson, its attorney, with cheating and defrauding the ignorant and surprised Gollins. The record is silent as to the fees paid for this service.

The rule was discharged and the stay of the sales vacated by order advised by Vice-Chancellor Fielder on April 26, 1926 (*pp. 51, 52*).

At the sale the appellants were represented by Mr. Abramson (*p. 59, l. 31*), their fourth attorney, who procured for his clients the thirty day option to redeem which is found in the record (*pp. 62, 63*). They did not, however, make use of that option, but addressed themselves to the wonted task of enlisting fresh counsel in their behalf.

After the sales had been held, reported, confirmed and deeds delivered, appellants' present counsel applied for a re-argument, and for leave to amend the original petition filed by the appellants, by making certain additional allegations (*pp. 53, 54*). The application was denied on June 7, 1926 (*p. 64*), and counsel forthwith appealed (*p. 65*) to this court.

This tedious recital of the appellants' course in this litigation would seem to eliminate all element of surprise. It is respectfully submitted that the application for a re-argument was without merit, and that the judicial action of the learned Vice-Chancellor who advised the orders appealed from should be affirmed.

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