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NEW JERSEY

## Court of Errors and Appeals

### NOTICE OF APPEAL

10

IN CHANCERY OF NEW JERSEY

*(Filed November 1, 1927)*

Between

UNITED STORES REALTY CORPORATION, a Corporation,

Complainant,

20

and

JAMES J. ASEA, RAMZA ASEA, his wife and MILDRED HARTMAN, Defendants.

The defendants, James J Asea and Ramza Asea, his wife hereby appeal from the final decree made in the above entitled cause by the Chancellor on the advice of Vice Chancellor Church on October 26th, 1927, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all causes. 30

Dated, October 28th, 1927.

HERZFELD & LITTAUER,  
Solicitors for Defendants,

James J. Asea and Ramza Asea, his wife.

40

*Petition of Appeal*

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

NICHOLAS S. SCHLOEDER,  
Of Counsel with Defendants,  
James J. Asea and Ramza Asea, his wife.

10

Service of the within Notice of Appeal is acknowledged this 29th day of October, 1927.

STEIN, McGLYNN & HANNOCH,  
Sol'rs of Complainant.

**PETITION OF APPEAL**

20 NEW JERSEY COURT OF ERRORS AND APPEALS

Between	}
UNITED STORES REALTY CORPORATION, a Corporation,	
Complainant-Appellee,	
and	
30 JAMES J. ASEA, RAMZA ASEA, his wife and MILDRED HARTMAN,	}
Defendants-Appellants.	

ON APPEAL FROM THE COURT OF CHANCERY

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

The petition of James J. Asea and Ramza Asea, his wife, the appellants in the above entitled cause,  
40 respectfully show that:

*Petition of Appeal*

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date October 26th, 1927, in a certain cause in said Court of Chancery wherein the said United Stores Realty Corporation was complainant and the said James J. Asea and Ramza Asea, his wife were defendants, in this respect, to wit, that the said decree adjudges that a certain deed made by defendants, James J. Asea and Ramza Asea, his wife, on the 12th day of November, 1926, to one, Mildred Hartman, and the deed from the said Mildred Hartman to defendant, Ramza Asea, dated November 12th, 1926, be set aside and held to be fraudulent, null and void and of no effect as against the judgment recovered by complainant in the District Court of the Second Judicial District of the County of Hudson, on March 18th, 1927. 10 20

And petitioners appeal from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the Court had no jurisdiction to make such decree because,

- (1) The action was prematurely brought.
- (2) Complainant had no lien on the property alleged to have been conveyed. 30
- (3) Complainant did not exhaust its remedy at law against the defendants.

Petitioners therefore pray that the said decree 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.

HERZFELD & LITTAUER, 40  
Solicitors for Appellants.

*Answer to Petition of Appeal*

Nicholas L. Schloeder,  
of Counsel with Appellants.

Service of a true copy of the within Petition of  
Appeal is acknowledged this 16th day of November,  
10 1927.

STEIN, McGLYNN & HANNOCH,  
Sol'rs of Complainant-Appellee.

**ANSWER TO PETITION OF APPEAL**

*(Filed December 14, 1927)*

20 NEW JERSEY COURT OF ERRORS AND APPEALS

Between  
UNITED STORES REALTY CORPORA-  
TION, a Corporation,  
Complainant,

and

30 JAMES J. ASEA, RAMZA ASEA, his  
wife and MILDRED HARTMAN,  
Defendants.

ON APPEAL FROM THE COURT OF CHANCERY

The answer of United Stores Realty Corporation,  
a corporation, the complainant-appellee, to the pe-  
tition of appeal of the above named defendants-ap-  
pellants.

40 This appellee not acknowledging all or any of the  
matters which, in the said petition of appeal are

*Bill of Complaint*

contained to be true, for answers thereto, neverthe-  
less, says and admits that a certain final decree was  
entered in the Court of Chancery in the cause for  
that purpose mentioned, in the said petition as  
therein stated, but as to the substance and form  
thereof respectively, this appellee prays to refer 10  
thereto when it shall be produced. And this ap-  
pellee is advised and verily believes that the said  
decree is agreeable to equity and prays that the  
same may be affirmed with costs to be adjudged to  
this appellee.

STEIN, McGLYNN & HANNOCH,  
Solicitors for and of Counsel with  
Complainant-Appellee.

20

**BILL OF COMPLAINT**

*(Filed August 9, 1927)*

IN CHANCERY OF NEW JERSEY

*To the Honorable Edwin Robert Walker, Chancel-  
lor of the State of New Jersey:*

30

The complainant United Stores Realty Corpora-  
tion, a corporation of New York, duly authorized  
and licensed to transact business in the State of  
New Jersey, respectfully shows that:

1. On October 6, 1926, the complainant entered  
into an agreement of lease with the defendant James  
J. Asea by the terms of which the complainant rent-  
ed to the defendant James J. Asea, the southerly  
store in the building situate and known as #435 Ber-  
genline Avenue, Union Hill, New Jersey, as the 40

*Bill of Complaint*

premises were then partitioned off, which premises were to be occupied by the defendant, James J. Asea, as a store for the sale of orangeade, frankfurters and soft drinks for the term commencing on the 15th day of October, 1926 and ending on the 10 14th day of October, 1931.

2. The said defendant, James J. Asea, agreed to pay the annual rent of \$1,500 up to and including October 14, 1928 and thereafter the annual rent of \$1,800 for the balance of the term, payable in equal monthly installments of \$125 on the 15th day of each month up to October 14, 1928 and in equal monthly installments of \$150 thereafter for the balance of the term.

20 3. Thereafter the said defendant, James J. Asea, entered into the possession and occupancy of said premises as a tenant thereof by virtue of said lease, but he refused and neglected to pay the installments of rent which became due on November 15, 1925 in the sum of \$125 and on December 15, 1925 in the sum of \$125 although often demanded.

4. Thereafter and on December 27, 1926 the complainant instituted suit in the District Court of the Second Judicial District of the County of Hudson 30 for the two installments of rent due as hereinbefore set forth. Judgment was rendered in said suit in favor of the complainant and against the defendant, James J. Asea, on March 18, 1927 in the sum of \$250 damages besides the sum of \$16.18 costs of suit.

5. Thereafter and on April 7, 1927 the complainant caused execution to be issued out of said District Court of the Second Judicial District of the County of Hudson directed to the Sergeant-at-Arms 40 of said court against the goods and chattels of the

*Bill of Complaint*

said defendant James J. Asea which said execution was returned by the said Sergeant-at-Arms, wholly unsatisfied.

6. On November 12, 1926, and for a long period of time prior thereto the defendant, James J. Asea, 10 was seized in fee simple of a certain tract of land and premises in the Township of North Bergen, County of Hudson and State of New Jersey and more particularly described as follows:

BEGINNING at a point in the northerly side or line of Angelique Street at a point distant 656.46 feet westerly from the westerly line of the Hudson Boulevard, running thence northerly and at right angles to Angelique Street 82 feet to a point in northerly line of lot #52 on said map; thence running 20 westerly and along northerly line of said lot #52 and also the northerly line of lot #51 on said map 21 feet to a point running thence southerly and parallel with the first course running 82 feet to said northerly line of Angelique Street and running thence easterly along northerly side of Angelique Street 21 feet to point.

Being parts of lots 51 and 52 on said map.

7. On said November 12, 1926 the said defendant, 30 James J. Asea and Raniza Asea, his wife, executed a deed purporting to convey the said lands and premises to one Mildred Hartman for the stated consideration of \$1 which said deed was on November 13, 1926 recorded in the Register's Office of the said County of Hudson in Book 1632 of Deeds for said County at page 17.

8. On said date the said Mildred Hartman executed a deed purporting to convey the said lands and 40

*Bill of Complaint*

premises to Raniza Asea, wife as aforesaid, for the stated consideration of \$1 which said deed was on November 13, 1926 recorded in the Register's Office of said County of Hudson in Book 1632 of Deeds for said County at page 18.

10 9. Said conveyance was voluntary and without the support of an adequate and valuable consideration and was fraudulent as against the complainant as a creditor of the said James J. Asea.

10. The complainant has been and is unable to find any other property of the said James J. Asea out of which to satisfy its said judgment and has exhausted its legal remedy against the said James J. Asea.

20 Complainant is without adequate remedy in the Courts of law and therefore prays:

1. That James J. Asea, Raniza Asea, his wife, and Mildred Hartman, who are the defendants to this suit may answer this Bill of Complaint and each statement therein made.

2. That the said defendants may make discovery of who has possessed and occupied the said lands and premises and received the rents, issues and profits thereof since the said pretended conveyance hereinabove set forth was made.

3. That the said defendants or some or one of them may be decreed to pay complainant the full amount due and owing to him on his said judgment, together with interest, costs and execution fees accrued thereon.

40 4. That the said fraudulent conveyance by the said defendants James J. Asea, Raniza Asea, his

*Bill of Complaint*

wife, to Mildred Hartman and from the said Mildred Hartman to Raniza Asea, wife as aforesaid, may be set aside and held to be fraudulent and declared null and void and of no effect as against complainant's said judgment.

5. That the said lands and premises may be sold free, clear and discharged of and from the said fraudulent conveyance under the said writ of execution, and the proceeds thereof, or so much thereof as may be necessary, applied to the payment of complainant's said judgment. 10

6. 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. 20

STEIN, McGLYNN & HANNOCH,  
Solicitors for and of Counsel with Complainant.

30

40

**ANSWER**

*(Filed August 23, 1927)*

IN CHANCERY OF NEW JERSEY

10 Between  
 UNITED STORES REALTY CORPORATION, a Corporation,  
 Complainant,  
 and  
 JAMES J. ASEA, RAMZA ASEA, his wife and MILDRED HARTMAN,  
 Defendants.  
 20

The answers of the defendants, James J. Asea and Ramza Asea, his wife.

The defendant, James J. Asea answering the Bill of Complaint says that:

1. Paragraphs 1 to 4 inclusive are admitted.
2. Defendant has no knowledge or information sufficient to form a belief as to the statements in  
 30 paragraph 5.
3. Paragraph 6 is admitted.
4. Paragraphs 7, 8, 9 and 10 are denied.
5. As a further defense, defendant alleges that complainant has no standing in this Court to enable it to question said alleged conveyance, in that this action is prematurely brought, for the reason that complainant has no lien on the property alleged to  
 40 have been conveyed, nor has complainant exhausted its remedy against defendant.

*Answer*

6. As a further defense, defendant alleges that said conveyance was made with good intent and that defendant was not rendered insolvent as a result of said conveyance.

7. As a further defense, defendant did not make said conveyance with actual intent to hinder, delay or defraud either present and future creditors. 10

The defendant, Ramza Asea answering the Bill of Complaint says that:

1. Defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs 1 to 5 inclusive.

2. Defendant admits paragraph 6. 20

3. Defendant denies paragraphs 7 to 9 inclusive.

4. Defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 10.

HERZFELD & LITTAUER,  
 Solicitors of Defendants,  
 James J. Asea and Ramza Asea.

**DESIGNATION**

*(Filed September 17, 1927)*

IN CHANCERY OF NEW JERSEY

10 Between  
 UNITED STORES REALTY CORPORA-  
 TION, a Corporation,  
 Complainant,  
 and  
 JAMES J. ASEA, RAMZA ASEA, his  
 wife and MILDRED HARTMAN,  
 Defendants.  
 20

This matter being opened to the court by Aaron Lasser, of the firm of Stein, McGlynn & Hannoeh, solicitors for the complainant, and this application being consented to by the solicitors of the defendant, it is on this 5th day of October, 1927

ORDERED, that the 26th day of October, 1927, at the hour of 10 a. m. in the forenoon, at Chancery Chambers, in the City of Newark, New Jersey, be  
30 designated as the time and place for the hearing of the above entitled cause.  
Alonzo Church, V. C.

We hereby consent to the entry of the above Designation.

HERZFELD & LITTAUER,  
Attorneys of Defendants.

**MINUTES OF FINAL HEARING**

IN CHANCERY OF NEW JERSEY

October 26, 1927.

Between  
 UNITED STORES REALTY CORPORA-  
 TION, a Corporation,  
 Complainant,  
 and  
 JAMES J. ASEA, RAMZA ASEA, his  
 wife and MILDRED HARTMAN,  
 Defendants.  
 20

10

Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, Alonzo Church, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Messrs. Stein, McGlynn & Hannoeh (by Norman B. Grobert) for complainant; Messrs. Herzfeld & Littauer (by Mr. Herzfeld) for defendant.

(Opening by complainant's counsel.) 30

Mr. Grobert: I offer deed from Antonio Ardito and husband to James Asea and John Asea, conveying the premises described in the bill.

Mr. Herzfeld: We have no objection to the introduction of the deed.

The Court: They will be marked. You can identify them.

Mr. Grobert: A deed from John Asea, unmarried, to James Asea, conveying John Asea's interest in 40

*Minutes of Final Hearing*

the property to his brother James Asea. A deed from James Asea and Ramza Asea, his wife, to Mildred Hartman; and a deed from Mildred Hartman to Ramza Asea, all for the same premises.

Papers marked C-1, C-2 C-3, C-4.

10 Mr. Grobert: I also offer the lease in evidence. I understand there is no objection to that.

Paper marked Exhibit C-5.

Mr. Grobert: It is also admitted that the deed whereby James Asea and wife conveyed to Mildred Hartman and Mildred Hartman conveyed to Ramza Asea were without consideration.

Mr. Herzfeld: We do not admit that, your Honor. That is a matter of proof for the complainant.

The Court: Yes. I think, if it is not admitted,  
20 you will have to prove it.

Mr. Grobert: All right. I am prepared to prove it.

It is also admitted by the answer that the defendants have a judgment which was recovered and the judgment still remains unsatisfied of record.

The Court: When was the judgment recovered?

Mr. Grobert: March, 1927.

The Court: When they entered into this agreement the defendant owned this property?

30 Mr. Grobert: Yes, sir.

The Court: And they subsequently—the man subsequently conveyed it through mesne conveyances to his wife?

Mr. Grobert: Yes, sir.

The Court: And the man signed the lease. All right. Then I suppose it is a question whether these deeds are fraudulently made, isn't it?

Mr. Grobert: Yes, sir.

40 The Court: All right.

*Minutes of Final Hearing*

Mr. Herzfeld: Does your Honor care to hear me?

The Court: Yes.

Mr. Herzfeld: This has been a most unusual opening and introduction of testimony.

I had a motion to make before the case went on, which I believe is dispositive of this entire case, but 10 I don't know whether your Honor wants me to wait until the proof is in or whether I should proceed now.

The Court: Well, you can do as you please about it.

Mr. Herzfeld: Well, I shall make the motion, at this time, because I believe that it is a very important one.

The Court: What are you moving to strike out,  
20 the bill?

Mr. Herzfeld: It will amount to that.

I have set up in my answer that this action is prematurely brought in that, the complainant has never reduced his judgment to a lien against real property, and I have cases here showing, that in order for the complainant to have a standing in a court of equity, it is necessary for him to reduce his judgment to a lien against real property, before the Court can consider the alleged fraudulent conveyance. 30

Chancellor Williamson in the case of *Swayze v. Swayze*, 9 Equity, 273, the Court says, "The principle is so well established, and is so familiar, that in order to give a creditor a standing in the courts, to enable him to question a conveyance of his debtor on account of fraud, he must have some lien on the property, that it is unnecessary to cite authorities on the point."

"The complainant, on the twenty-first of Septem- 40

*Minutes of Final Hearing*

ber, 1835, recovered a judgment in a Justice's court, against Daniel Swayze, for the sum of ninety eight dollars and ninety nine cents, and on the twenty-fourth of September, 1849, he files his bill in this court, and asks to have a conveyance, made by his  
10 debtor on the tenth of January 1831 set aside for fraud."

Before proceeding further, I just want to show by analogy that this case is exactly as the case I am quoting to the Court. In this case the complainant recovered a judgment for two hundred and fifty dollars in the District Court of Kearney, and has never docketed his judgment, so that it remains a lien on real estate, but is merely a judgment in the District Court, and, as the Court knows, a Dis-  
20 trict Court judgment does not affect real property.

In the *Swayze* case the Court further says: "This judgment, by the statute, was no lien upon the land, and the complainant does not show that he had exhausted his remedy by execution, or any reason why he did not enforce his judgment against his debtor. Indeed, the complainant shows by his bill that his debtor had abundant personal property to satisfy the judgment. Under these circumstances—after a delay of fourteen years and after his debtor is dead,  
30 there is no propriety in the Court's interfering in his behalf even if his judgment was of a nature to warrant it.

"The only reason why the Court of Chancery interferes on behalf of a judgment creditor is to remove the obstacle which has been fraudulently interposed to prevent the satisfaction of the judgment by due process of law. But if this conveyance had never been made, the judgment could not have  
40 been enforced against this land.

*Complainant's: Frederick E. Bauer—Direct*

"In this aspect of the case, the complainant is not entitled to relief."

I have another case, the case of *Young v. Frier*, 9 Equity, 465: "The defendants have, by their several answers, made the discovery which the bill calls for. But they insist that the complainants have no  
10 right, by a bill in this court to question the judgments nor the disposition of the partnership property, because, as creditors at large, they have no standing in this court. The objection is well taken. The principle has always been recognized by the  
15 courts, both of law and equity, in this state."

Now, I submit, your Honor, that the complainant has no standing in this court as a creditor to attempt to set aside an alleged fraudulent conveyance because, even if he could succeed in this court,  
20 he would have no lien on the property so that he could set aside his decree, and I submit, your Honor, this bill should be dismissed, as set up in the answer.

(Discussion.)

The Court: I will deny the motion.

Mr. Herzfeld: I ask for an exception, your Honor.

FREDERICK E. BAUER, sworn for the complainant: 30

Direct-examination by Mr. Grobert:

Q. Mr. Bauer, what is your occupation? A. I am attorney and counsellor-at-law of the State of New Jersey.

Q. And did you draw up these deeds that have been put in evidence here this morning? A. I did.

Q. Was there any conversation passed between any of the parties for the real estate conveyed by  
40 these deeds? A. None whatever.

*Complainant's: Frederick E. Bauer—Cross*

Mr. Grobert: That is all.

CROSS-EXAMINATION by Mr. Herzfeld:

Q. Mr. Bauer, will you explain to the Court the circumstances under which these deeds were drawn?

10 Mr. Grobert: I object to that, if the Court please.

The Court: I will allow it.

The Witness: Do you want me to tell—

The Court: Just explain the circumstances.

The Witness: Mr. Asea and his wife came to my office about a year ago—I don't know the exact date—and Mr. Asea told me that he just consulted his physician about some difficulties he was having in his system and the physician advised that he should 20 have an almost immediate operation and therefore he wanted to put his affairs in such shape that his wife would have no difficulty, if anything happened to him, and that was the reason he gave me for transferring title. He brought with him his deed; I think, his deed from his brother to himself was the deed he had with him, and I then prepared the deeds from him and his wife to a young lady in the office, Gertrude Hartman, and the deed back 30 to her to his wife and they executed them and they waited for them that morning because he expected to go to the hospital almost immediately.

The Court: Is that all?

The Witness: That is all.

Mr. Grobert: That is all.

The Court: That is all, sir.

Mr. Herzfeld: At this time, I request my motion that I made at the start of the case, that upon the complainant's case that they are not entitled to—(interrupted)

40 The Court: Now, if you want to make that

*Defendants': James Asea—Direct*

motion, you are precluded, if it is denied, from putting in any evidence. Now, you can make it or not, as you choose. The rule of the Court of Chancery is that, if you ask to dismiss on the complainant's case and the motion is denied, you are not entitled to put 10 in any defense.

Mr. Herzfeld: Your Honor, then I will withdraw the motion.

JAMES ASEA, sworn for the defendant:

Direct-examination by Mr. Herzfeld:

Q. Mr. Asea, on or about November 12, 1926, were you the owner of a piece of property in North Bergen, which is the subject of this suit? Were 20 you the owner of that property? A. Sir?

Q. Were you the owner of the property on November 12, 1926, which is the subject of this suit? A. Yes, sir.

Q. And did you, on or about that date—(interrupted)

The Court: Are you hard of hearing?

The Witness: Yes, sir.

The Court: Come up here.

Q. Did you, on or about that date, convey that 30 property through one, Miss Hartman, to your wife, Mrs. Asea? A. Yes, sir.

Q. Did you sell that property? A. Yes, sir.

Q. Will you explain to the Court your reason for doing that? A. Well, you see, I have been suffering now—

Mr. Grobert: I object.

A. (continuing)—for seven years.

The Court: I will allow it.

*Defendants': James Asea—Direct*

The Witness: I have been suffering six years with a stricture. Three doctors are tending to me, so I can't hardly walk. I went to Dr. Franklin and he said, "You must go to the hospital before you drop dead. If you will wait, is something dan-  
 10 gerous." He wrote me a letter to go to the hospital for an operation. I went home and told my wife I am very danger (?) if I got a cold when I had that operation. If I owed you money—I have been drawing her money, twenty three hundred dollars to use. I said, "It is just as well for you to take the property and somebody else, because, if I died in the hospital, my brother might come from Paterson and make a claim he  
 20 plains the situation. I had to sit on a chair with pains. I went home and see my three children and wife in front of me, so I couldn't go to the hospital, see? So Mr. Bauer changed the paper; he had been our attorney for the past ten years; and I have been suffering since. I have a letter from Mr. Franklin, which is I have—I have to go to this hospital.

Mr. Grobert: Never mind.

Q. Now, Mr. Asea, in November, 1926— A. Yes, sir.

30 Q. —when you sold that property to your wife, did you have anything else in your name, or any other property whatsoever? A. Yes, sir.

Mr. Grobert: Your Honor please, I object to that.

The Court: I will allow it.

A. I had the mill, a silk mill, 553 Summit Avenue.

Q. What kind of a mill was that? A. Silk Mill.

Q. Silk mill? A. Money credit what she has in

40 it.

*Defendants': James Asea—Cross*

Q. And how many people did you have working?

A. I had seven people.

Q. And in your opinion, Mr. Asea, how much would you say that that silk mill was worth? A. The silk mill is worth over ten thousand dollars.

Mr. Grobert: If the Court please, I would 10 like my objection noted to this whole line of testimony.

The Court: Well, you have; it is noted already.

Q. Did you have any other property? A. Well I had some money in the bank at that time, and had charge of a pool room and recreation academy on Bergenline Avenue.

Q. Now, will you tell the Court whether you are able to pay this judgment of two hundred and fifty 20 dollars today? A. No, sir.

Mr. Grobert: I object to that.

The Witness: I can't pay it.

The Court: I will allow it.

The Witness: Because I don't see how I can pay it when they have got my money; they have four hundred and twenty five dollars out of my money and I don't see any ways that I can get the money.

Mr. Grobert: Your Honor please, I object 30 to it.

The Court: It is all right; I will allow it.

The Witness: And they took my fixtures for fourteen hundred dollars.

Mr. Herzfeld: All right. That is all.

CROSS-EXAMINATION by Mr. Grobert:

G. Mr. Asea, did you ever undergo the operation?

A. Run what?

Q. Did you undergo the operation? A. What is 40 that?

*Defendants': Ramza Asea—Direct*

The Court: Come up here.

Q. Did you go to the hospital? A. Well, I didn't go to the hospital.

Q. Did you ever have the operation? A. No, sir.

The Court: Do you own this silk mill now?

10 The Witness: No, sir; I sold it in March.

The Court: When? March '27?

The Witness: Yes; March '27.

The Court: Who did you sell it to?

The Witness: I sold it to a fellow from Paterson. His name is Pass. He moved away. It used to be 952 Summit Avenue.

Mr. Grobert: That is all.

Mr. Herzfeld: Mrs. Asea.

20 RAMZA J. ASEA, sworn for the defendant:

Direct-examination by Mr. Herzfeld:

Q. Mrs. Asea, you are the wife of the previous witness? A. Yes.

Q. Will you explain to the Court the circumstances under which this deed was made to you, and the reason for it? A. Well, my husband was to go under a serious operation and he was up to see Dr. Franklin from Jersey City and he ordered him to go to a hospital immediately for an operation; told him it was very dangerous. He came home to me and he told me the situation and he says, "Ramza, the doctor said that the operation was very serious, and, being that I have been taking your money right along, the business, it is no more than right that I should turn the property over into your name."

Mr. Herzfeld: I see. That is all.

Mr. Grobert: No questions.

40 Mr. Herzfeld: That is our case, your Honor.

*Argument*

The Court: Well, do you want to sum up or do you want to file memorandums? What do you want?

Mr. Grobert: I am perfectly willing to submit it to your Honor's decision.

Mr. Herzfeld: All I have to say, your Honor, it has been a very short case and very simple. It all hinges around the judgment of two hundred and fifty dollars and the burden of proof is upon the complainant to show your Honor that this complainant by means of the fraud of these defendants have not been enabled to collect its judgment. I do not believe that the Court should lend its aid to setting aside a conveyance on such meager proof as this, particularly when the amount of the judgment is two hundred and fifty dollars, and when it can be satisfied through some other means. The complainant has other means. This man is a young man. He can work and there is no reason why they cannot satisfy it through the usual channels of law, and, furthermore, I submit, your Honor, that this conveyance was not fraudulent. This man has testified and the man who was subpoenaed by the complainant has testified that when the man came to have the deeds transferred he told him that he was to undergo a very serious operation, and, because of the fact that he owed his wife some money and in case he died some brother from Paterson might make a claim to the property, he wanted to protect her in every possible manner, so, under the facts of the case, I believe that the complainant is not entitled to a conveyance.

*Argument*

10 Mr. Grobert: The Court please, there is one  
 circumstance I would like to point out to  
 your Honor and that is, there has been all  
 this talk here this morning about a serious  
 operation and doctor's advice, but no doctor  
 is produced. The operation was never per-  
 formed and the wife still holds the property.  
 This man admits that he has no assets with  
 which to pay the judgment, and, in view of  
 this situation, I believe that the law is very  
 clear that fraud is presumed and the burden  
 of proof is cast upon the defendant to prove  
 that the conveyances are free from fraud,  
 once we proved that the conveyance was  
 made, and that the conveyance was not sup-  
 20 ported by any consideration, and, in view of  
 all these facts, I believe there should be a de-  
 cree in favor of the complainant.

The Court: I will advise a decree for the complainant.

Mr. Herzfeld: May I ask an exception, your Honor?

The Court: You don't have to in Chancery.

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**FINAL DECREE**

*(Filed October 28, 1927)*

IN CHANCERY OF NEW JERSEY

Between UNITED STORES REALTY CORPORA- TION, a Corporation, Complainant,  and  JAMES J. ASEA, RAMZA ASEA, his wife and MILDRED HARTMAN, Defendants.	}  }	10  20
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This cause coming on to be heard in the presence of Norman B. Grobert, of the firm of Stein, McGlynn & Hannoeh, Solicitors of Complainant and Mervin Herzfeld of the firm of Herzfeld & Littauer, Solicitors of Defendants, and the Court having examined the pleadings and taken proofs orally and in open Court, and having heard and considered arguments of counsel thereon;

And the Court being satisfied that the defendant 30 James J. Asea on November 15, 1926 became indebted to complainant in the sum of \$250; that on the 12th day of November, 1926, the said defendants James J. Asea and Ramza Asea, his wife, executed a deed conveying to the defendant Mildred Hartman the lands and premises hereinafter described, which deed was recorded as hereinafter stated; that on the same date the said Mildred Hartman conveyed the premises hereinafter described to the said Ramza Asea, wife as aforesaid, which deed was re- 40

*Final Decree*

10 corded as hereinafter stated; that the said conveyances were voluntary and without the support of an adequate valuable consideration and were fraudulent as against complainant as a creditor of said James J. Asea; that complainant on the 18th day of March, 1927, recovered a judgment on said debt against the said defendant James J. Asea in the District Court of the Second Judicial District of the County of Hudson in the sum of \$250 damages and \$16.18 costs; that complainant has caused an execution to be issued out of said District Court of the Second Judicial District of the County of Hudson on said judgment against said defendant, James J. Asea, which said execution has been returned wholly unsatisfied; that complainant has been and
 20 is unable to find any other property of the said defendant, James J. Asea, out of which to satisfy his said judgment and has exhausted his legal remedy against said defendant, James J. Asea; that the said judgment still remains wholly unpaid and unsatisfied; that the said deed for the said lands and premises made by defendant, James J. Asea and Ramza Asea, his wife, to the defendant Mildred Hartman, as aforesaid, and the deed from the defendant Mildred Hartman to the defendant Ramza Asea were
 30 fraudulent as against the complainant as a creditor of the said defendant, James J. Asea and should be set aside as against said complainant;

40 It is on this 26th day of October, 1927, ORDERED, ADJUDGED AND DECREED that the said deed made by the defendant James J. Asea and Ramza Asea, his wife, on the 12th day of November, 1926, and recorded in the Register's Office of the County of Hudson in Book 1632 of Deeds for said County at page 17, to the defendant Mildred Hartman, and the deed from the defendant, Mildred Hartman, to the de-

*Final Decree*

fendant, Ramza Asea, made on the 12th day of November, 1926 and recorded in the Register's Office of the County of Hudson in Book 1632 of Deeds for said County at page 18 for all that certain tract or parcel of land and premises situate, lying and being in the Township of North Bergen, County of Hudson and State of New Jersey, on a certain map on file in the Hudson County Register's Office, entitled "Map of property belonging to B. W. Rudiger, North Bergen, Hudson County, N. J." is bounded and described as follows, to wit:

BEGINNING at a point in the northerly side or line of Angelique Street at a point distant six hundred and fifty-six feet and forty-six one hundredths of a foot (656.46) westerly from the westerly line of the Hudson Boulevard, running thence northerly and at right angles to Angelique Street, eighty two (82) feet to a point in the northerly line of lot numbered fifty-two (52) on said map aforesaid; thence running westerly and along the northerly line of said lot fifty-two (52) and also the northerly line of lot fifty-one (51) on said map, twenty-one (21) feet to a point; running thence southerly and parallel with the first course run, eighty-two (82) feet to the said northerly line of Angelique Street, and running thence easterly, along the northerly side of Angelique Street, twenty-one (21) feet to the point or place of beginning, being parts of lots numbered fifty one (51) and fifty two (52) on said map aforesaid.

be and the same are hereby set aside and held to be fraudulent, null and void and of no effect as against the judgment recovered by said complainant in the District Court of the Second Judicial District of the County of Hudson on the 18th day

*Final Decree*

of March, 1927, against the said defendant, James J. Asea, for \$250 damages and \$16.18 costs; and that the defendants pay to the complainant the costs of this suit to be taxed, including counsel fee of \$25 which is hereby allowed to said complainant.

10 It is further ORDERED that unless the said defendants James J. Asea and Ramza Asea, his wife, shall within        days after service upon them of true, but uncertified copies of this decree and of said taxed bill of costs pay to the complainant the amount due it upon its said judgment together with interest thereon and the said taxed costs execution issue for said taxed costs against the goods and chattels, lands, tenements and hereditaments and real estate of the said defendant, James J. Asea according to the practice of this court, directed to the Sheriff of the said County of Hudson, and that the said Sheriff proceed to sell the lands and premises hereinabove described under and by virtue of said writ of execution free, clear and discharged of and from the said deeds hereinabove set forth and of and from all claims of the said defendant, James J. Asea and Ramza Asea, his wife, thereunder or by virtue thereof.

E. R. WALKER, C.

20 Respectfully advised,  
Alonzo Church.

We hereby approve the within Decree as to form.

HERZFELD & LITTAUER,  
Solicitors for James J. Asea and Ramza Asea.

**STIPULATION**

*(Filed December 27, 1927)*

NEW JERSEY COURT OF ERRORS AND APPEALS

ON APPEAL FROM THE COURT OF CHANCERY

Between  
UNITED STORES REALTY CORPORATION, a Corporation,  
Complainant-Appellee,  
and  
JAMES J. ASEAS, RAMZA ASEAS, his wife and MILDRED HARTMAN,  
Defendants-Appellants.

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WHEREAS it appears that there was offered in evidence by the complainant a Deed from John Asea, unmarried, to James Asea, conveying John Asea's interest in the property, which is the subject of this appeal, to his brother, James Asea; a Deed from James Asea and Ramza Asea, his wife, to Mildred Hartman; a Deed from Mildred Hartman to Ramza Asea; and a certain lease entered into by complainant and defendant, James Asea dated October 6th, 1927, which exhibits are marked, C-1, C-2, C-3, C-4 and C-5, respectively and,

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WHEREAS it further appears that said exhibits are not essential to the determination of this appeal: It is hereby stipulated by and between the solicitors for the respective parties hereto that the inclusion of said exhibits in the state of the case is hereby waived.

Dated, December 23, 1927.

STEIN, McGLYNN & HANNOCH,  
Solicitors for Complainant-Appellee.  
HERZFELD & LITTAUER,  
Solicitors for Defendants-Appellants.

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## New Jersey Court of Errors and Appeals

Between

UNITED STORES REALTY CORPORATION, a corporation,  
Complainant-Appellee,

and

JAMES J. ASEA, RAMZA ASEA,  
his wife, and MILDRED HART-  
MAN,

Defendants-Appellants.

On Appeal  
from Court  
of Chancery.

### **BRIEF FOR DEFENDANTS-APPELLANTS, JAMES J. ASEA AND RAMZA ASEA, HIS WIFE.**

#### **Statement.**

The record in this case brings into this court the decree (p. 25) made in the Court of Chancery, in a suit brought by complainant to set aside an alleged fraudulent conveyance by defendant James J. Asea, through one Mildred Hartman to defendant Ramza Asea; as against the judgment in sum of Two hundred fifty (\$250) Dollars recovered by complainant in the District Court of Second Judicial District of the County of Hudson, against defendant, James J. Asea.

The complainant alleged in his bill of complaint (p. 6, fol. 27) that suit was commenced, and judgment subsequently obtained on March 18, 1927, in the District Court of the Second Judicial District of the County of Hudson against defendant James J. Asea in sum of Two hundred fifty (\$250) Dollars besides Sixteen Dollars and eighteen cents (\$16.18) costs of suit, which judgment was admitted in answer of defendant James J. Asea (p. 10, fol. 26).

The complainant further alleged that the said James J. Asea, the appellant in this cause, conveyed certain real estate owned by him (p. 7, fol. 8, et seq.) to one Mildred Hartman, and thence to defendant Ramza Asea, which said conveyances, complainant contended, were fraudulent, as against said judgment.

This, defendant James J. Asea denied, and further set up a defense, in his answer (p. 10, fols. 34-41) that the action by complainant to set aside said alleged fraudulent conveyance was prematurely brought, for the reason that complainant had no lien on the property alleged to have been conveyed, nor had complainant exhausted its remedy against defendant.

This was urged again by counsel for defendant James J. Asea at the outset of the case, before the Vice Chancellor (p. 15, fol. 16), but the motion to strike out the bill on that ground was denied.

The contention of defendant, James J. Asea was, and is, that in order for complainant to succeed in its suit, it was necessary for it to have a lien upon the property alleged to have been fraudulently conveyed before it could attempt to set aside the conveyance, and that the learned Vice Chancellor erred in setting aside said conveyance, in view of complainant's failure to acquire said lien.

In the determination of this case we are not concerned with the question whether the conveyance by defendant James J. Asea was fraudulent, as it is our contention that the Court of Chancery could not consider the question whether the conveyance was fraudulent as against the judgment recovered by complainant in the District Court, inasmuch as said judgment was not a lien against real property. In support of this contention, the defendant James J. Asea relies upon the settled law of this State as hereinafter stated.

#### POINT I.

**In order to give a creditor standing in Court of Equity, to enable him to question conveyance of his debtor, on account of fraud, he must have some lien on the property.**

The judgment recovered by complainant in the District Court of the Second Judicial District of the County of Hudson against defendant James J. Asea in the sum of Two hundred fifty (\$250) Dollars on March 18th, 1927, was not a lien against real property.

*Section 172 of the District Court Act 2  
Compiled Statutes, page 2005.*

The proposition that complainant must have a lien against real property if he desires to proceed against the real property of his debtor alleged to have been fraudulently conveyed is not *res nova* in this State, but has been repeatedly affirmed. Chancellor Williamson in the case of *Swayze v. Swayze*, 9 N. J. E., 273, states:

"The principle is so well established, and is so familiar, that in order to give a creditor a standing in the court, to enable him to question a conveyance of his debtor on account of fraud, *he must have some lien on the property*, that it is unnecessary to cite authorities on the point.

The complainant, on the 21st of September, 1835, recovered a judgment in a Justice's Court against Daniel Swayze, for the sum of Ninety-eight Dollars and ninety-nine Cents (\$98.99) and on the 24th of September, 1849, he files his bill in this court, and asks to have a conveyance made by his debtor on the 10th of January, 1831, set aside for fraud.

This judgment, by the statute, *was no lien upon the land*, and the complainant does not show that he had exhausted his remedy by execution, or any reason why he did not enforce his judgment against his debtor. \* \* \*

The only reason why the Court of Chancery interferes on behalf of a judgment-creditor, is, to remove the obstacle which has been fraudulently interposed to prevent the satisfaction of the judgment by due process of law. *But if this conveyance had never been made, the judgment could not have been enforced against this land.*"

The same competent authority, Chancellor Williamson in the case of *Dunham v. Cox*, 10 N. J. E., 437 reiterates and amplifies said rule and states:

"This was a bill filed by a judgment and execution creditor, for the purpose of setting aside certain conveyance of real and personal property made by the debtor, as is alleged, to defeat his creditors."

On page 466 the court says:

"That a judgment and execution creditor may maintain a bill in a Court of Equity to remove out of the way fraudulent encumbrances placed by a debtor upon his property, in order that the property may be appropriated free from such fraudulent encumbrances to the satisfaction of the creditor's judgment, is so well established, that it is needless to refer to any of the numerous authorities to sustain the position. As there appears some doubt as to the *extent* (the italics are the Chancellor's) to which such creditor must proceed at law before he can invoke the aid of a Court of Equity, it may be well for this court to express an opinion on this point."

That Chancellor then went on to state that "when a creditor has by a judgment established his debt, by the statute, he acquires a lien upon all the real estate of his debtor to satisfy his debt. \* \* \* It is not necessary for him to take out execution upon his judgment. The judgment constitutes a *lien* upon the land, and there is no necessity of compelling the creditor, as a mere matter of form, to incur the further expense at law of issuing an execution."

It will be noted that in the above cited case the judgment, by the statute, was a lien, and as a condition precedent for a creditor to invoke the aid of the Court of Chancery to set aside an alleged fraudulent conveyance, said complainant must acquire a *lien* upon the real property, although it is not necessary to issue execution.

Other cases illustrative of this principle are:

Robert v. Hodges, et al., 16 N. J. E., 299;  
Haston v. Castner, 31 N. J. E., 697;  
Guy B. Waite Co. v. Otto (N. J. Ch.), 54  
Atl., 425.

An extended note on the necessity of acquiring a lien upon real property before proceeding to set aside a fraudulent conveyance of real property in the Court of Equity may be found in 23 L. R. A. (N. S.), at page 26, et seq.

### CONCLUSION.

We therefore submit, that in the failure of complainant to acquire a lien upon the real property of defendant James J. Asea, the Court of Chancery did not have jurisdiction to set aside the alleged fraudulent conveyance, and that the decree from which the appeal is taken be reversed, and the bill of complaint be dismissed.

MERVIN HERZFELD,  
Solicitor for Defendants-Appellants.

NICHOLAS S. SCHLOEDER,  
of Counsel.

67 FEB. T. 1928

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

*Between*

UNITED STORES REALTY CORPORATION, a corporation,  
*Complainant-Appellee,*

*and*

JAMES J. ASEA, RAMZA ASEA,  
his wife, and MILDRED  
HARTMAN,  
*Defendants-Appellants.*

*On Appeal  
from Court  
of Chancery.*

**BRIEF FOR COMPLAINANT-APPELLEE,  
UNITED STORES REALTY CORPORATION,  
a corporation.**

### Statement of Facts.

The statement of facts as contained in the brief of the defendants-appellants is correct, but it is not complete. The evidence also showed that the conveyance of the property from the defendant James J. Asea to his wife, the defendant Ramza Asea, through an intermediary, was without consideration. It was further shown that this conveyance left the defendant absolutely insolvent and without any funds whatsoever with which to pay complainant's judgment or any part thereof. This was admitted by the defendant on his direct examination.

### Argument.

In this situation it is argued on behalf of the appellants that the mere fact that the complainant had not docketed its judgment in the Hudson County Court of Common Pleas should permit

this defendant to be successful in his obvious plan to perpetrate this fraud on his creditors.

This Honorable Court has said with reference to this subject:

"The Statute must be liberally construed. It is intended to discourage fraud and promote honesty. The Court must so apply it as to give effect to its fundamental purpose." *Post v. Stiger*, 29 N. J. Equity, 554 at 560.

Even though complainant's judgment had been docketed, it would have acquired no lien on the real estate which is the subject matter of this suit for the obvious reason that the record title to said real property was, at the time of the recovery of the judgment, not in defendant James J. Asea, but in his wife, the defendant, Ramza Asea.

At this point in the argument, the case of *Cook v. Johnson*, 12 N. J. Equity, 51, seems to be in point. There Chancellor Williamson, said (at p. 54)

"It was insisted that the complainant has a remedy at law under the Statute Nixon 251 and 330. The complainant asks this Court to remove the fraudulent conveyance out of the way. It is true he may sell Johnson's interest in the property as it now stands with the legal title in the trustee; but he is not obliged to sell it with this fraudulent conveyance covering it and run the risk of its being satisfied. He has the right to have the title cleared up before the sale. This is the only Court that can do that."

It is respectfully urged that this case presents exactly the situation which exists in the case at bar. The complainant has a judgment which he cannot enforce against the debtor's real estate until a fraudulent conveyance is removed from

the public records, so that the said deed would not constitute an encumbrance on the title which complainant might acquire under an execution sale of the property. To the same effect is *Brown v. Fuller*, 13 N. J. Equity, 271.

All of the cases cited by the appellant were decided many years prior to the enactment of the most recent legislation on the subject of fraudulent conveyances, Chapter 213 of the Pamphlet Laws of 1919, entitled "An Act concerning fraudulent conveyances and to make uniform the law relating thereto." Section 9 of that act is illuminating in this connection and is dispositive of the only question raised by this appeal. That section reads,

"Where a conveyance or obligation is fraudulent as to a creditor, such creditor, *when his claim has matured*, may as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser (a) have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim." (Italics are ours.)

It is respectfully submitted, that by a reasonable construction of this act, it is not even incumbent upon the creditors to reduce his debt or obligation to judgment. The act clearly contemplates the filing of a creditor's bill as soon as the debt is due. This is the plain and obvious meaning of the expression "when his claim has matured." It is significant to note in this connection that Section 10 of the Act provides for situations where conveyances are made which are fraudulent as against a creditor whose claim has not matured, granting to him the same remedies which are made available to a creditor whose claim has matured.

The Act is clear and unambiguous. It is patent that it does not contemplate the compliance by the creditor with a number of conditions precedent as a prerequisite to the right to succeed with a bill to set aside a conveyance made in fraud of the creditor. The Statute was enacted to codify and clarify the existing law on the subject and provides in Section 12 that it "shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it."

It is respectfully submitted, therefore, that the decree of the Court of Chancery should be in all things affirmed.

STEIN, McGLYNN & HANNOCH,  
Solicitors for and of Counsel  
with Complainant-Appellee.