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## BILL OF COMPLAINT

### In Chancery of New Jersey

To His Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey:

The complainants, GEORGE KAZEPIS, NICK G. PINIOS, MARGARITIS CHRISTON, CHRISTOPHORE CAPLANE, PARRY JORDAN, CHARLES JOSEPH and PETER CALATHES, of the City of New York and State of New York, respectfully allege and show:

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#### FIRST COUNT

1. That prior to the *18th day of October, 1927*, the North Jersey Holding Company, a corporation of the State of New Jersey, through its agents, servants and employees represented to George Kazepis and Nick G. Pinios that they were the owners of a certain tract or parcel of land situated and lying in the Township of Teaneck, County of Bergen and State of New Jersey, designated on a certain map entitled "Map of West Englewood Manor, West Englewood, N. J." and designated on said map as Lot No. 4 in Block No. 263-Z, and that the said property was free of any restrictions and that the same *could be used for the erection of stores or dwellings, or both*, for the conduct therein of retail or wholesale business.

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2. That the said representations were false and were made by the North Jersey Holding Company, a corporation of the State of New Jersey, with the knowledge of their falsity and for the purpose of inducing the said George Kazepis and Nick G. Pinios to enter into a contract for the purchase of the property herein above referred to. That the said George Kazepis and Nick G. Pinios, relying upon the said representations made by the North Jersey Holding Company, a corporation of the

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State of New Jersey, its agents, servants and employees, did enter into a contract on the 18th day of October, 1927 for the purchase of the property hereinabove referred to.

10        3. That thereafter and pursuant to the terms of said contract, the said George Kazepis and Nick G. Pinios paid to the North Jersey Holding Company, the sum of TWELVE HUNDRED FIFTY (\$1250.00) DOLLARS and received a deed from the said North Jersey Holding Company for the property hereinabove referred to and the said George Kazepis and Nick G. Pinios made and executed a mortgage to the North Jersey Holding Company in the sum of THIRTY-SEVEN HUNDRED FIFTY (\$3750.00) DOLLARS in accordance with the said contract.

20        4. That at the time of the execution of said agreement and at all of the times subsequent thereto, the property heretofore described was *zoned* by the Township of Teaneck, in the County of Bergen and State of New Jersey, in which township the property is situated, and *restricted against the erection of stores or the conduct of retail or wholesale business*, to the knowledge of the said North Jersey Holding Company, its officers, agents, 30        servants or employees, and particularly GEORGE M. KYPRIE, who had acted as agent and representative of the said North Jersey Holding Company.

40        5. That the said North Jersey Holding Company, through its agents, servants and employees, falsely and fraudulently represented to the said George Kazepis and Nick G. Pinios that the said property was zoned so as to permit retail and wholesale business and the erection of stores or dwellings, or both, and the said George Kazepis and Nick G. Pinios, relying upon these representa-



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tions, which representations were made for the purpose of inducing the said George Kazepis and Nick G. Pinios to enter into an agreement for the purchase of said property. That the contract, a copy of which is hereto annexed and made a part hereof, specifically provided that the premises hereinabove described may be used for the erection of stores or dwellings, or both, or the conduct of retail or wholesale business. 10

6. That at all of the times thereafter mentioned and a long time after the acceptance of said deed, for the premises hereinabove described, the said George Kazepis and Nick G. Pinios and your complainants were unaware that the statements of the officers and agents of the said North Jersey Holding Company were false and fraudulent and were made solely for the purpose of inducing the said George Kazepis and Nick G. Pinios to enter into and execute the contract hereinabove referred to. 20

6a. That the said George Kazepis and Nick G. Pinios attention was not called to the fact that the said property was zoned against the erection of stores or dwellings by the Township of Teaneck until the said Township of Teaneck introduced an ordinance re-zoning the Township, but the Township Zoning Commission refused to zone the property in question so that it might be used for the erection of stores or dwellings, or both, or for the conduct of retail or wholesale business. 30

7. That immediately upon the discovery of the fraud practised by the North Jersey Holding Company, its officers, agents, servants and employees, the said George Kazepis and Nick G. Pinios and the complainant made a demand upon the said North Jersey Holding Company to repay to the 40



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complainant the amount paid under the terms of said contract and to cancel and discharge the mortgage executed by the said George Kazepis and Nick G. Pinios and deliver a reconveyance of the property hereinabove referred to.

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8. That the said North Jersey Holding Company has refused to deliver for cancellation the mortgage heretofore executed according to the terms of said contract and has refused to repay to the said George Kazepis and Nick G. Pinios and to the complainants, the sum paid on the said contract.

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9. That your complainants, George Kazepis and Nick G. Pinios hereby tender themselves ready to re-convey to the defendant herein, by a good and sufficient conveyance in law, the premises hereinabove mentioned and described free from any and all encumbrances except the mortgage hereinabove referred to.

Complainant is without adequate remedy in the courts of law and therefor pray:

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1. That the North Jersey Holding Company may answer this bill of complaint and each statement therein made.

2. That this Court may declare the said agreement rescinded and void and for nothing holden, and the said defendant may be decreed to pay to complainant the several sums paid upon said fraudulent contract together with interest.

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3. That the said mortgage given by the vendee may be decreed to be given up by the defendant and cancelled upon receipt of a good and sufficient conveyance in the law for said property free from all encumbrances excepting the mortgage aforesaid.



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4. That a writ of subpoena may issue commanding the defendant to answer this bill of complaint and to abide by such decree as may be made in the premises.

## SECOND COUNT

1. That prior to the *2nd day of August, 1927*, the North Jersey Holding Company, a corporation of the State of New Jersey, through its agents, servants and employees, represented to Margaritis Christon that they were the owners of a certain tract or parcel of land situate and lying in the Township of Teaneck in the County of Bergen, State of New Jersey, designated on a certain Map entitled "Map of West Englewood Manor, West Englewood, N. J., as Lot No. 7 in Block No. 263-Z, and that the said property was free of any restrictions and that the same could be used for the erection of stores or dwellings, or both, for the conduct therein of retail or wholesale business. 10 20

2. That the said representations were false and were made by the North Jersey Holding Company, a corporation of the State of New Jersey, with the knowledge of their falsity and for the purpose of inducing the said Margaritis Christon to enter into a contract for the purchase of the property hereinabove referred to. That the said Margaritis Christon, relying upon the said representations made by the North Jersey Holding Company, a corporation of the State of New Jersey, its agents, servants and employees, did enter into a contract on the 2nd day of August, 1927 for the purchase of the property hereinabove referred to. 30 40

3. That thereafter and pursuant to the terms of said contract the said Margaritis Christon paid to



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10 the North Jersey Holding Company the sum of  
TWELVE HUNDRED FIFTY DOLLARS (\$1250.00) and  
received a deed from the said North Jersey Hold-  
ing Company for the property hereinabove re-  
ferred to and the said Margaritis Christon made  
and executed a mortgage to the North Jersey  
Holding Company in the sum of THIRTY-SEVEN  
HUNDRED FIFTY DOLLARS (\$3750.00) in accordance  
with the said contract, upon which mortgage said  
Margaritis Christon has paid the sum of TWENTY-  
FIVE HUNDRED DOLLARS (\$2500.00) on account of  
principal.

20 4. That at the time of the execution of said  
agreement and at all of the times subsequent  
thereto, the property heretofore described was  
zoned by the Township of Teaneck in the County  
of Bergen, State of New Jersey, in which Town-  
ship the property is situate, and restricted against  
the erection of stores or the conduct of retail or  
wholesale business, to the knowledge of the said  
North Jersey Holding Company, its officers, agents,  
servants or employees, and particularly GEORGE  
M. KYPRIE, who had acted as agent and repre-  
sentative of the said North Jersey Holding Com-  
pany.

30 5. That the said North Jersey Holding Com-  
pany, through its agents, servants and employees,  
falsely and fraudulently represented to the said  
Margaritis Christon that the said property was  
zoned so as to permit retail and wholesale busi-  
ness and the erection of stores or dwellings, or  
both, and the said Margaritis Christon relied upon  
these representations, which representations were  
40 made for the purpose of inducing the said Mar-  
garitis Christon to enter into an agreement for the



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purchase of said property. That the contract, a copy of which is hereto annexed and made a part hereof, specifically provided that the premises hereinabove described may be used for the erection of stores or dwellings or both, or the conduct of retail or wholesale business.

6. That at all of the times thereafter mentioned and a long time after the acceptance of said deed, for the premises hereinabove described, the said Margaritis Christon and your complainants were unaware that the statements of the officers and agents of the said North Jersey Holding Company were false and fraudulent and were made solely for the purpose of inducing the said Margaritis Christon to enter into and execute the contract hereinabove referred to.

6a. That the said Margaritis Christon's attention was not called to the fact that the said property was zoned against the erection of stores or dwellings by the Township of Teaneck until the said Township of Teaneck introduced an ordinance re-zoning the Township, but the Township Zoning Commission refused to zone the property in question so that it might be used for the erection of stores or dwellings, or both, or for the conduct of retail or wholesale business.

7. That immediately upon the discovery of the fraud practised by the North Jersey Holding Company, its officers, agents, servants and employees, the said Margaritis Christon and the said complaints made a demand upon the said North Jersey Holding Company to repay to the complainant the amount paid under the terms of said contract and to cancel and discharge the mortgage executed by the said Margaritis Christon and deliver

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a reconveyance of the property hereinabove referred to.

10       8. That the said North Jersey Holding Company has refused to deliver for cancellation the mortgage heretofore executed according to the terms of said contract and has refused to repay to the said Margaritis Christon and to the complainants, the sum paid on the said contract.

9. That your complainant, Margaritis Christon, hereby tenders herself ready to re-convey to the defendant herein, by a good and sufficient conveyance in law, the premises hereinabove mentioned and described free from any and all encumbrances except the mortgage hereinabove referred to.

20       Complaint is without adequate remedy in the courts of law and therefore prays:

1. That the North Jersey Holding Company may answer this bill of complaint and each statement therein made.

2. That this Court may declare the said agreement rescinded and void and for nothing holden, and the said defendant may be decreed to pay to complainant the several sums paid upon said fraudulent contract together with interest.

30       3. That the said mortgage given by the vendee may be decreed to be given up by the defendant and cancelled upon receipt of a good and sufficient conveyance in the law for said property free from all encumbrances excepting the mortgage aforesaid.

40       4. That a writ of subpoena may issue commanding the defendant to answer this bill of complaint and to abide by such decree as may be made in the premises.



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## THIRD COUNT

1. That prior to the *6th day of June, 1928*, the North Jersey Holding Company, a corporation of the State of New Jersey, through its agents, servants and employees, represented to Christophore Caplane that they were the owners of a certain tract or parcel of land situate and lying in the Township of Teaneck in the County of Bergen, State of New Jersey, designated on a certain Map entitled "Map of West Englewood Manor, West Englewood, N. J.," as Lot No. 6 in Block No. 263-Z, and that the said property was free of any restrictions and that the same could be used for the erection of stores or dwellings, or both, for the conduct therein of retail or wholesale business.

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2. That the said representations were false and were made by the North Jersey Holding Company, a corporation of the State of New Jersey, with the knowledge of their falsity and for the purpose of inducing the said Christophore Caplane to enter into a contract for the purchase of the property hereinabove referred to. That the said Christophore Caplane, relying upon the said representations made by the North Jersey Holding Company, a corporation of the State of New Jersey, its agents, servants and employees, did enter into a contract on the 6th day of June, 1927 for the purchase of the property hereinabove referred to.

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3. That thereafter and pursuant to the terms of said contract the said Christophore Caplane paid to the North Jersey Holding Company the sum of FOURTEEN HUNDRED SEVENTY-TWO DOLLARS and FIFTY CENTS (\$1472.50) and received a deed from the said North Jersey Holding Company for the property hereinabove referred to and the said

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10 Christophore Caplane made and executed a mortgage to the North Jersey Holding Company in the sum of FORTY-FOUR HUNDRED SEVENTEEN DOLLARS and FIFTY CENTS (\$4417.50) in accordance with the said contract, upon which mortgage said Christophore Caplane has paid the sum of EIGHTEEN HUNDRED SEVENTY-FIVE DOLLARS (\$1875.00) on account of principal.

20 4. That at the time of the execution of said agreement and at all of the times subsequent thereto, the property heretofore described was zoned by the Township of Teaneck in the County of Bergen, State of New Jersey, in which Township the property is situate, and restricted against the erection of stores or the conduct of retail or wholesale business, to the knowledge of the said North Jersey Holding Company, its officers, agents, servants or employees, and particularly GEORGE M. KYPRIE, who had acted as agent and representative of the said North Jersey Holding Company.

30 5. That the said North Jersey Holding Company, through its agents, servants and employees, falsely and fraudulently represented to the said Christophore Caplane that the said property was zoned so as to permit retail and wholesale business and the erection of stores or dwellings, or both, and the said Christophore Caplane, relied upon these representations, which representations were made for the purpose of inducing the said Christophore Caplane to enter into an agreement for the purchase of said property. That the contract, a copy of which is hereto annexed and made a part hereof, specifically provided that the premises hereinabove described may be used for the

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erection of stores or dwellings, or both, or the conduct of retail or wholesale business.

6. That at all of the times thereafter mentioned and a long time after the acceptance of said deed, for the premises hereinabove described, the said Christophore Caplane and your complainants were unaware that the statements of the officers and agents of the said North Jersey Holding Company were false and fraudulent and were made solely for the purpose of inducing the said Christophore Caplane to enter into and execute the contract hereinabove referred to.

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6a. That the said Christophore Caplane's attention was not called to the fact that the said property was zoned against the erection of stores or dwellings by the Township of Teaneck until the said Township of Teaneck introduced an ordinance re-zoning the Township, but the Township Zoning Commission refused to zone the property in question so that it might be used for the erection of stores or dwellings, or both, or for the conduct of retail or wholesale business.

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7. That immediately upon the discovery of the fraud practised by the North Jersey Holding Company, its officers, agents, servants and employees, the said Christophore Caplane and the said complainants made a demand upon the said North Jersey Holding Company to repay to the complainants the amount paid under the terms of said contract and to cancel and discharge the mortgage executed by the said Christophore Caplane and deliver a reconveyance of the property hereinabove referred to.

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8. That the said North Jersey Holding Company has refused to deliver for cancellation the

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mortgage heretofore executed according to the terms of said contract and has refused to repay to the said Christophore Caplane and to the complainants the sum paid on the said contract.

10        9. That your complainant, Christophore Caplane, hereby tenders himself ready to re-convey to the defendant herein, by a good and sufficient conveyance in law, the premises hereinabove mentioned and described free from any and all encumbrances except the mortgage hereinabove referred to.

Complainant is without adequate remedy in the courts of law and therefor prays:

20        1. That the North Jersey Holding Company may answer this bill of complaint and each statement therein made.

2. That this Court may declare the said agreement rescinded and void and for nothing holden, and the said defendant may be decreed to pay to complainants the several sums paid upon said fraudulent contract together with interest.

30        3. That the said mortgage given by the vendee may be decreed to be given up by the defendant and cancelled upon receipt of a good and sufficient conveyance in the law for said property free from all encumbrances excepting the mortgage aforesaid.

4. That a writ of subpoena may issue commanding the defendant to answer this bill of complaint and to abide by such decree as may be made in the premises.

## FOURTH COUNT

40        1. That prior to the 11th day of April, 1928, the North Jersey Holding Company, a corporation of the State of New Jersey, through its agents, ser-



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vants and employees, represented to Christophore Caplane and Parry Jordan that they were the owners of a certain tract or parcel of land situate and lying in the Township of Teaneck in the County of Bergen, State of New Jersey, designated on a certain map entitled "Map of West Englewood Manor, West Englewood, N. J." as Lot No. 33 in Block No. 263-Z, and that the said property was free of any restrictions and that the same could be used for the erection of stores or dwellings, or both, for the conduct of retail or wholesale business.

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2. That the said representations were false and were made by the North Jersey Holding Company, a corporation of the State of New Jersey, with the knowledge of their falsity and for the purpose of inducing the said Christophore Caplane and Parry Jordan, to enter into a contract for the purchase of the property hereinabove referred to. That the said Christophore Caplane and Parry Jordan, relying upon the said representations made by the North Jersey Holding Company, a corporation of the State of New Jersey, its agents, servants and employees, did enter into a contract on the 11th day of April, 1928 for the purchase of the property hereinabove referred to.

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3. That thereafter and pursuant to the terms of said contract the said Christophore Caplane and Parry Jordan paid to the North Jersey Holding Company the sum of SEVEN HUNDRED FIFTY (\$750.00) DOLLARS and received a deed from the said North Jersey Holding Company for the property hereinabove referred to and the said Christophore Caplane and Parry Jordan made and

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10 executed a mortgage to the North Jersey Holding Company in the sum of THREE THOUSAND DOLLARS (\$3,000) in accordance with the said contract, upon which mortgage said Christophore Caplane and Parry Jordan have paid the sum of Two HUNDRED SEVENTY-FIVE DOLLARS (\$275.00) on account of principal.

20 4. That at the time of the execution of said agreement and at all of the times subsequent thereto, the property heretofore described was zoned by the Township of Teaneck in the County of Bergen, State of New Jersey, in which Township the property is situate, and restricted against the erection of stores or the conduct of retail or wholesale business, to the knowledge of the said North Jersey Holding Company, its officers, agents, servants, or employees, and particularly GEORGE M. KYPRIE, who had acted as agent and representative of the said North Jersey Holding Company.

30 5. That the said North Jersey Holding Company, through its agents, servants and employees, falsely and fraudulently represented to the said Christophore Caplane and Parry Jordan that the said property was zoned so as to permit retail and wholesale business and the erection of stores or dwellings, or both, and the said Christophore Caplane and Parry Jordan, relied upon these representations, which representations were made for the purpose of inducing the said Christophore Caplane and Parry Jordan to enter into an agreement for the purchase of said property. That the contract, a copy of which is hereto annexed and made a part hereof, specifically provided that the premises hereinabove described may be used for  
40 the erection of stores or dwellings, or both, or the conduct of retail or wholesale business.



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6. That at all of the times thereafter mentioned and a long time after the acceptance of said deed, for the premises hereinabove described, the said Christophore Caplane and Parry Jordan and your complainants were unaware that the statements of the officers and agents of the said North Jersey Holding Company were false and fraudulent and were made solely for the purpose of inducing the said Christophore Caplane and Parry Jordan to enter into and execute the contract hereinabove referred to. 10

6a. That the said Christophore Caplane and Parry Jordan's attention was not called to the fact that the said property was zoned against the erection of stores or dwellings by the Township of Teaneck until the said Township of Teaneck introduced an ordinance re-zoning the Township, but the Township Zoning Commission refused to zone the property in question so that it might be used for the erection of stores or dwellings, or both, or for the conduct of retail or wholesale business. 20

7. That immediately upon the discovery of the fraud practised by the North Jersey Holding Company, its officers, agents, servants and employees, the said Christophore Caplane and Parry Jordan and the said complainants made a demand upon the said North Jersey Holding Company to repay to the complainants the amount paid under the terms of said contract and to cancel and discharge the mortgage executed by the said Christophore Caplane and Parry Jordan and deliver a reconveyance of the property hereinabove referred to. 30

8. That the said North Jersey Holding Company has refused to deliver for cancellation the 40



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mortgage heretofore executed according to the terms of said contract and has refused to repay to the said Christophore Caplane and Parry Jordan and to the complainants the sum paid on the said contract.

10       9. That your complainants, Christophore Caplane and Parry Jordan, hereby tender themselves ready to reconvey to the defendant herein, by a good and sufficient conveyance in law, the premises hereinabove mentioned and described free from any and all encumbrances except the mortgage hereinabove referred to.

Complainant is without adequate remedy in the courts of law and therefor prays:

20       1. That the North Jersey Holding Company may answer this bill of complaint and each statement therein made.

2. That this Court may declare the said agreement rescinded and void and for nothing holden, and the said defendant may be decreed to pay to complainants the several sums paid upon said fraudulent contract together with interest.

30       3. That the said mortgage given by the vendees may be decreed to be given up by the defendant and cancelled upon receipt of a good and sufficient conveyance in the law for said property free from all encumbrances excepting the mortgage aforesaid.

4. That a writ of subpoena may issue commanding the defendant to answer this bill of complaint and to abide by such decree as may be made in the premises.

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## FIFTH COUNT

1. That prior to the 6th day of June, 1927 the North Jersey Holding Company, a corporation of



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the State of New Jersey, through its agents, servants and employees, represented to Peter Calathes that they were the owners of a certain tract or parcel of land situate and lying in the Township of Teaneck in the County of Bergen, State of New Jersey, designated on a certain map entitled "Map of West Englewood Manor, West Englewood, N. J.," as Lot No. 5 in Block No. 263-Z, and that the said property was free of any restrictions and that the same could be used for the erection of stores or dwellings, or both, for the conduct of retail or wholesale business.

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2. That the said representations were false and were made by the North Jersey Holding Company, a corporation of the State of New Jersey, with the knowledge of their falsity and for the purpose of inducing the said Peter Calathes to enter into a contract for the purchase of the property hereinabove referred to. That the said Peter Calathes, relying upon the said representations made by the North Jersey Holding Company, a corporation of the State of New Jersey, its agents, servants and employees, did enter into a contract on the 6th day of June, 1927 for the purchase of the property hereinabove referred to.

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3. That thereafter and pursuant to the terms of said contract the said Peter Calathes paid to the North Jersey Holding Company the sum of TWELVE HUNDRED FIFTY DOLLARS (\$1250.00) and received a deed from the said North Jersey Holding Company for the property hereinabove referred to and the said Peter Calathes made and executed a mortgage to the North Jersey Holding Company in the sum of THIRTY-SEVEN HUNDRED FIFTY DOLLARS (\$3750.00) in accordance with the said contract, upon which mortgage said Peter Calathes has paid

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the sum of ELEVEN HUNDRED FORTY-FIVE DOLLARS and SIXTY-EIGHT CENTS (\$1145.68) on account of principal.

10 4. That at the time of the execution of said agreement and at all of the times subsequent thereto, the property heretofore described was zoned by the Township of Teaneck in the County of Bergen, State of New Jersey, in which Township the property is situate, and restricted against the erection of stores or the conduct of retail or wholesale business, to the knowledge of the said North Jersey Holding Company, its officers, agents, servants or employees, and particularly GEORGE M. KYPRIE, who had acted as agent and representative of the said North Jersey Holding Company.

20 5. That the said North Jersey Holding Company, through its agents, servants and employees, falsely and fraudulently represented to the said Peter Calathes that the said property was zoned so as to permit retail and wholesale business and the erection of stores or dwellings, or both, and the said Peter Calathes relied upon these representations, which representations were made for the purpose of inducing the said Peter Calathes to enter into an agreement for the purchase of said property. That the contract, a copy of which is hereto annexed and made a part hereof, specifically provided that the premises hereinabove described may be used for the erection of stores or dwellings, or both, or the conduct of retail or wholesale business.

30 6. That at all of the times thereafter mentioned and a long time after the acceptance of said deed, for the premises hereinabove described, the said Peter Calathes and your complainants were

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unaware that the statements of the officers and agents of the said North Jersey Holding Company were false and fraudulent and were made solely for the purpose of inducing the said Peter Calathes to enter into and execute the contract hereinabove referred to.

6a. That the said Peter Calathes attention was not called to the fact that the said property was zoned against the erection of stores or dwellings by the Township of Teaneck until the said Township of Teaneck introduced an ordinance rezoning the Township, but the Township Zoning Commission refused to zone the property in question so that it might be used for the erection of stores or dwellings, or both, or for the conduct of retail or wholesale business.

7. That immediately upon the discovery of the fraud practised by the North Jersey Holding Company, its officers, agents, servants and employees, the said Peter Calathes and the said complainant made a demand upon the said North Jersey Holding Company to repay to the complainant the amount paid under the terms of said contract and to cancel and discharge the mortgage executed by the said Peter Calathes and deliver a reconveyance of the property hereinabove referred to.

8. That the said North Jersey Holding Company has refused to deliver for cancellation the mortgage heretofore executed according to the terms of said contract and has refused to pay to the said Peter Calathes and to the complainants the sum paid on the said contract.

9. That your complainant, Peter Calathes, hereby tenders himself ready to reconvey to the defendant herein, by a good and sufficient convey-

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ance in the law, the premises hereinabove mentioned and described free from any and all encumbrances except the mortgage hereinabove referred to.

Complainant is without adequate remedy in the courts of law and therefor prays:

10

1. That the North Jersey Holding Company may answer this bill of complaint and each statement therein made.

2. That this Court may declare the said agreement rescinded and void and for nothing holden, and the said defendant may be decreed to pay to complainants the several sums paid upon said fraudulent contract together with interest.

20

3. That the said mortgage given by the vendee may be decreed to be given up by the defendant and cancelled upon receipt of a good and sufficient conveyance in the law for said property free from all encumbrances excepting the mortgage aforesaid.

4. That a writ of subpoena may issue commanding the defendant to answer this bill of complaint and to abide by such decree as may be made in the premises.

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## SIXTH COUNT

1. That prior to the 18th day of October, 1927 the North Jersey Holding Company, a corporation of the State of New Jersey, through its agents, servants and employees, represented to Charles Joseph that they were the owners of a certain tract or parcel of land situate and lying in the Township of Teaneck in the County of Bergen, State of New Jersey, designated on a certain map entitled "Map of West Englewood Manor, West Engle-

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*Bill of Complaint*

wood, N. J.," as Lot No. 3 in Block No. 263-Z, and that the said property was free of any restrictions and that the same could be used for the erection of stores or dwellings, or both, for the conduct of retail or wholesale business.

2. That the said representations were false and were made by the North Jersey Holding Company, a corporation of the State of New Jersey, with the knowledge of their falsity and for the purpose of inducing the said Charles Joseph to enter into a contract for the purchase of the property hereinabove referred to. That the said Charles Joseph, relying upon the representations made by the North Jersey Holding Company, a corporation of the State of New Jersey, its agents, servants and employees, did enter into a contract on the 18th day of October, 1927 for the purchase of the property hereinabove referred to.

3. That thereafter and pursuant to the terms of said contract the said Charles Joseph paid to the North Jersey Holding Company the sum of FIFTEEN HUNDRED FIFTY DOLLARS (\$1550.00) and received a deed from the said North Jersey Holding Company for the property hereinabove referred to and the said Charles Joseph made and executed a mortgage to the North Jersey Holding Company in the sum of THIRTY-SEVEN HUNDRED FIFTY DOLLARS (\$3750.00) in accordance with the said contract, upon which mortgage the said Charles Joseph has paid the sum of SEVEN HUNDRED TWENTY-FOUR DOLLARS and FIFTY CENTS (\$724.50) on account of principal.

4. That at the time of the execution of said agreement and at all of the times subsequent thereto, the property heretofore described was

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*Bill of Complaint*

10 zoned by the Township of Teaneck in the County of Bergen, State of New Jersey, in which Township the property is situate, and restricted against the erection of stores or the conduct of retail or wholesale business, to the knowledge of the said North Jersey Holding Company, its officers, agents, servants or employees, and particularly GEORGE M. KYPRIE, who had acted as agent and representative of the said North Jersey Holding Company.

20 5. That the said North Jersey Holding Company, through its agents, servants and employees, falsely and fraudulently represented to the said Charles Joseph that the said property was zoned so as to permit retail and wholesale business and the erection of stores or dwellings, or both, and the said Charles Joseph relied upon these representations, which representations were made for the purpose of inducing the said Charles Joseph to enter into an agreement for the purchase of said property. That the contract, a copy of which is hereto annexed and made a part hereof, specifically provided that the premises hereinabove described may be used for the erection of stores or dwellings, or both, or the conduct of retail or wholesale business.

30 6. That thereafter on October 18th, 1927 the said Charles Joseph assigned all of his right, title and interest in said contract to George Kazepis and Nick G. Pinios, and thereafter said Charles Joseph conveyed said lot to the said George Kazepis and Nick G. Pinios.

40 7. That at all of the times thereafter mentioned and a long time after the acceptance of said deed, for the premises hereinabove described, the said



*Bill of Complaint*

Charles Joseph and your complainants, were unaware that the statements of the officers and agents of the said North Jersey Holding Company were false and fraudulent and were made solely for the purpose of inducing the said Charles Joseph to enter into and execute the contract hereinabove referred to.

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8. That immediately upon the discovery of the fraud practised by the North Jersey Holding Company, its officers, agents, servants and employees, the said Charles Joseph and the said complainants made a demand upon the said North Jersey Holding Company to repay to the complainant the amount paid under the terms of said contract and to cancel and discharge the mortgage executed by the said Charles Joseph and deliver a reconveyance of the property hereinabove referred to.

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9. That the said North Jersey Holding Company has refused to deliver for cancellation the mortgage heretofore executed according to the terms of said contract and has refused to pay to the said Charles Joseph and to the complainants the sum paid on the said contract.

10. That your complainants, Charles Joseph, George Kazepis and Nick G. Pinios, hereby tender themselves ready to reconvey to the defendant herein, by a good and sufficient conveyance in the law, the premises hereinabove mentioned and described free from any and all encumbrances except the mortgage hereinabove referred to.

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Complainant is without adequate remedy in the courts of law and therefor prays:

1. That the North Jersey Holding Company may answer this bill of complaint and each statement therein made.

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2. That this Court may declare the said agreement rescinded and void and for nothing holden, and the said defendant may be decreed to pay to complainants the several sums paid upon said fraudulent contract together with interest.

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3. That the said mortgage given by the vendee may be decreed to be given up by the defendant and cancelled upon receipt of a good and sufficient conveyance in the law for said property free from all encumbrances excepting the mortgage aforesaid.

4. That a writ of subpoena may issue commanding the defendant to answer the bill of complaint and to abide by such decree as may be made in the premises.

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WRIGHT, VANDER BURGH & MCCARTHY,  
Solicitors for Complainants.

LE ROY VANDER BURGH,  
Of Counsel.

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AGREEMENT made and entered into this EIGHTEENTH day of October, 1927 between NORTH JERSEY HOLDING COMPANY, a Corporation of New Jersey, party of the first part; and GEORGE KAZEPIS and NICK G. PINIOS, of 1254 Westchester Avenue, New York City, N. Y., party of the second part;

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WITNESSETH: That the said party of the first part, in consideration of the sum of One (\$1.00) Dollar, and of the covenants, agreements and conditions hereinafter contained and agreed to be done and performed by the said party of the second part, and in further consideration of the sum of

FIVE THOUSAND DOLLARS (\$5,000)



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agreed to be paid and satisfied by the said party of the second part, as hereinafter mentioned, the said party of the first part will well and sufficiently convey to the said party of the second part, their heirs or assigns, by deed of general warranty, a good and marketable title in fee simple, free from all encumbrances except as hereinafter stated, on or before SEE RIDER.

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All those certain lots of land in the Township of Teaneck in the County of Bergen and State of New Jersey which on a certain map on file in the office of the Clerk of Bergen County entitled "Map of West Englewood Manor, West Englewood, N. J." made by Wm. C. Beuscher, C. E. & Surveyor, are known as lots numbered Four (4) in block 263-Z as laid down on said map.

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And the said party of the second part, for his heirs, executors, administrators, and assigns, do covenant, promise and agree, to and with the said party of the first part, that the said party of the second part, will pay and satisfy, or cause to be paid and satisfied unto the said party of the first part the said sum of FIVE THOUSAND DOLLARS (\$5000.00) as and for the purchase money of the foregoing described lands, in the following manner:

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## RIDER

Upon the execution and delivery of this agreement, the receipt whereof is hereby acknowledged, the sum of ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1250.00).

It is agreed that the party of the first part will within a period of thirty (30) days from date here-

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*Bill of Complaint*

10 of deliver to the party of the second part a warranty deed to the aforesaid lot and will take back a purchase money mortgage on said lot, payable with interest at 6% per annum, quarter-annually, to contain the usual thirty (30) day interest default clause; sixty (60) day tax and municipal lien default clause.

20 This mortgage is to remain standing for eight (8) months from the date hereof after which time the mortgagor agrees to pay to the party of the first part the sum of ONE HUNDRED DOLLARS (\$100.00) plus 6% every month until the principal sum of ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250.00) additional shall have been paid, whereupon after that date the said mortgage shall remain standing for a period of two (2) years, the interest payments, however, to be made quarter-annually.

30 And the said party of the second part does further covenant and agree to assume and pay all taxes upon said lands from and after the date of this contract, and that the taxes thereon for the current year shall be adjusted and apportioned between the parties hereto as of the date hereof, upon the closing of title.

Said lands and premises are to be conveyed subject to any assessment for improvements made, unconfirmed or confirmed after the date hereof.

40 It is hereby mutually agreed between the parties hereto, that the deed so to be given by the said party of the first part to the said party of the second part, shall contain the following covenants



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on the part of the said party of the second part, their heirs, executors and assigns, and the following restrictions:

(a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force.

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(b) No house shall be erected without a cellar, neither shall any house be erected upon any such lot, the cost of erection of which shall be less than \$8500.00.

(c) There shall not be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline or oil selling station, garage, factory or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same nor any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. Said lands may, however, be used for stores or dwellings or both for the conduct therein of retail or wholesale business, not in violation of the aforesaid provisions.

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(d) These covenants and restrictions shall run with the land and be binding upon all owners thereof, their heirs, executors and assigns, forever.

IN WITNESS WHEREOF, the said parties have

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hereunto set their hands and seals the day and  
year first above written.

NORTH JERSEY HOLDING COMPANY,

By DAVID S. LEVY (Signed)

SEAL

Vice President.

Attest:

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A. LEVITON,  
Secretary.

GEORGE KAZEPIS (S. L.)

NICK G. PINIOS (S. L.)

Signed, Sealed and  
Delivered in the  
Presence of:

GEORGE M. KYPRIE

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AGREEMENT made and entered into this SEC-  
OND day of AUGUST, 1927 between the NORTH JER-  
SEY HOLDING COMPANY, a corporation of New Jer-  
sey, party of the first part, and MARGARITIS CHRIS-  
TON of 240 West 49th Street, New York City, N.  
Y. party of the second part.

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WITNESSETH: That the said party of the first  
part, in consideration of the sum of One (\$1.00)  
Dollar, and of the covenants, agreements and con-  
ditions hereinafter contained and agreed to be  
done and performed by the said party of the sec-  
ond part, and in further consideration of the sum  
of

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FIVE THOUSAND DOLLARS (\$5,000)  
agreed to be paid and satisfied by the said party of  
the second part, as hereinafter mentioned, the said  
party of the first part will well and sufficiently con-  
vey to the said party of the second part, his heirs  
or assigns, by deed of general warranty, a good  
and marketable title in fee simple, free from all



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encumbrances except as hereinafter stated, on or before August 30th, 1927;

All those certain lots of land in the Township of Teaneck in the County of Bergen and State of New Jersey which on a certain map on file in the Office of the Clerk of Bergen County entitled "Map of West Englewood Manor, West Englewood, N. J." made by Wm. C. Beuscher, C. E. & Surveyor, are known as lots numbered Seven (No. 7) in Block 263-Z as laid down on said Map.

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And the said party of the second part, for himself, his heirs, executors, administrators, and assigns, do covenant, promise and agree, to and with the said party of the first part, that he, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied unto the said party of the first part the sum of FIVE THOUSAND DOLLARS (\$5,000.00) as and for the purchase money of the foregoing described lands, in the following manner, that is to say:

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Upon the execution and delivery of this agreement, the receipt whereof is hereby acknowledged, the sum of ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1250.00)

Upon the closing of title as herein provided for, the sum of \$-----

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By the said party of the second part executing his bond to the said party of the first part in the sum of THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3750.00). Balance of THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3750.00) to be secured by a purchase money mortgage on said lots payable with interest at 6% per annum; to contain the usual 30 day interest default clause; 60 day tax and municipal lien default clause; said

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bond and mortgage to provide for the payment on account of the principal sum thereof of ONE HUNDRED DOLLARS (\$100.00) with interest on the first day of each and every month commencing on November 1st, 1927, for a period of eight (8) months thereafter, when a lump sum of FOUR HUNDRED FIFTY DOLLARS (\$450.00), shall be paid, leaving a balance due of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2500.00) which shall remain standing for a period of two (2) years thereafter, namely until May 1st, 1930. Interest on this attending balance shall be paid quarter-annually beginning May 1st, 1928.

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AGREEMENT made and entered into this ELEVENTH day of APRIL 1928 between NORTH JERSEY HOLDING COMPANY, a corporation of New Jersey, party of the first part; and CHRISTOPHORE CAPLANE and PARRY JORDAN, of 785 Columbus Avenue, New York City, N. Y., party of the second part;

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WITNESSETH: That the said party of the first part, in consideration of the sum of One (\$1.00) Dollar, and of the covenants, agreements and con-



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ditions hereinafter contained and agreed to be done and performed by the said party of the second part, and in further consideration of the sum of

THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$3750.00)

agreed to be paid and satisfied by the said party of the second part, as hereinafter mentioned, the said party of the first part will well and sufficiently convey to the said party of the second part, their heirs or assigns, by deed of general warranty, a good and marketable title in fee simple, free from all encumbrances except as hereinafter stated, on or before May 1st, 1828;

All those certain lots of land in the Township of Teaneck in the County of Bergen and State of New Jersey which on a certain map on file in the office of the Clerk of Bergen County entitled "Map of West Englewood Manor, West Englewood, N. J." made by Wm. C. Beuscher, C. E. & Surveyor, are known as lots numbered Thirty-three (33) in Block 263-Z as laid down on said map.

And the said party of the second part, for themselves, their heirs, executor, administrators, and assigns, do covenant, promise and agree, to and with said party of the first part, that they, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied unto the said party of the first part the said sum of THREE THOUSAND SEVEN HUNDRED and FIFTY DOLLARS (\$3750.00)—

Upon the closing of title as herein provided for, the sum of -----

By the said party of the second part executing his bond to the said party of the first part in the

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sum of THREE THOUSAND DOLLARS (\$3000.00) to be secured by a purchase money mortgage on said lands, payable with interest at 6% per annum, monthly, to become due in 3½ years from the date hereby fixed for the closing of title; to contain the usual 30 day interest default clause; 60 day tax and municipal lien default clause;

Said mortgage shall be payable as follows:

\$55.00 per month plus accrued interest at 6% for a period of 18 months until the sum of \$1875.00, including the down payment of \$760.00, shall have been paid, in, whereupon the mortgage shall become standing until Nov. 1st, 1931, excepting that accrued interest payments shall be made by the party of the second part every six (6) months. At the maturity of the mortgage the entire balance of the principal, together with accrued interest, shall become immediately due and payable.

And the said party of the second part does further covenant and agree to assume and pay all taxes upon said lands from and after the date of this contract, and that the taxes thereon for the current year shall be adjusted and apportioned between the parties hereto as of the date hereof, upon the closing of title.

Said lands and premises are to be conveyed subject to any assessment for improvements made, unconfirmed or confirmed after the date hereof.

It is hereby mutually agreed between the parties hereto, that the deed so to be given by the said party of the first part to the said party of the second part, shall contain the following covenants on the part of the said party of the second part, their



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heirs, executors and assigns, and the following restrictions:

(a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force. 10

(b) No house shall be erected without a cellar, neither shall any house be erected upon any such lot, the cost of erection of which shall be less than \$8,500.00.

(c) There shall not be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline or oil selling station, garage, factory or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same nor any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. Said lands may, however, be used for stores or dwellings or both for the conduct therein of retail or wholesale business, not in violation of the aforesaid provisions. 20 30

(d) These covenants and restrictions shall run with the land and be binding upon all owners thereof, their heirs, executors and assigns, forever.

IN WITNESS WHEREOF, the said parties have 40



*Bill of Complaint*

hereunto set their hands and seals the day and year first above written.

NORTH JERSEY HOLDING COMPANY.

By DAVID S. LEVY,  
Vice President.

SEAL

Attest:

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A. LEVITON,  
Secretary.

CHRISTOPHORE CAPLANE (S. L.)  
PARRY JORDAN (S. L.)

Signed, Sealed and

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AGEEMENT made and entered into this SIXTH day of JUNE, 1927 between NORTH JERSEY HOLDING COMPANY, a Corporation of New Jersey, party of the first part; and CHRISTOPHORE CAPLANE of 785 Columbus Avenue, New York City, N. Y. party of the second part;

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WITNESSETH: That the said party of the first part, in consideration of the sum of One (\$1.00) Dollar, and of the covenants, agreements and conditions hereinafter contained and agreed to be done and performed by the said party of the second part, and in further consideration of the sum of FIVE THOUSAND EIGHT HUNDRED NINETY DOLLARS (\$5,890.00) agreed to be paid and satisfied by the said party of the second part, as hereinafter mentioned, the said party of the first part will well and sufficiently convey to the said party of the second part, his heirs or assigns, by deed of general warranty, a good and marketable title in fee simple, free from all encumbrances except as hereinafter stated, on or before June 14th, 1927;

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All those certain lots of land in the Township of Teaneck in the County of Bergen and State of



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New Jersey, which on a certain map on file in the office of the Clerk of Bergen County entitled "Map of West Englewood Manor, N. J.," made by Wm. C. Beuscher, C. E. & Surveyor, are known as lots numbered 6 in block 263-Z as laid down on said map.

And the said party of the second part, for himself, his heirs, executors, administrators, and assigns, do covenant, promise and agree, to and with said party of the first part, that he, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied unto the said party of the first part the said sum of FIVE THOUSAND EIGHT HUNDRED AND NINETY DOLLARS (\$5890.00) as and for the purchase money of the foregoing described lands, in the following manner, that is to say:

Upon the execution and delivery of this agreement, the receipt whereof is hereby acknowledged, the sum of ONE THOUSAND FOUR HUNDRED SEVENTY TWO DOLLARS 50/100 (\$1472.50). Beginning July 15th, party of the second part agrees to pay the party of the first part the balance at the rate of \$125.00 promptly on the first day of each and every month, with interest at 6% per annum on all unpaid balances then due, until the party of the second part shall have paid in, including the down payment of \$1,472.50, the principal sum of \$5,890.00.

And the said party of the second part does further covenant and agree to assume and pay all taxes upon said lands from and after the date of this contract, and that the taxes thereon for the current year shall be adjusted and apportioned

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between the parties hereto as of the date hereof, upon the closing of title.

Said lands and premises are to be conveyed subject to any assessment for improvements made unconfirmed or confirmed after the date hereof.

10 It is hereby mutually agreed between the parties hereto, that the deed so to be given by the said party of the first part to the said party of the second part, shall contain the following covenants on the part of the said party of the second part, his heirs, executors and assigns, and the following restrictions:

20 (a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force.

(b) No house shall be erected without a cellar, neither shall any house be erected upon any such lot, the cost of erection of which shall be less than \$8500.00.

30 (c) There shall not be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline or oil selling station, garage, factory or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same nor any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. Said lands may, however, be used for stores or dwellings or both for the conduct therein of retail or  
40 wholesale business, not in violation of the aforesaid provisions.



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(d) These covenants and restrictions shall run with the land and be binding upon all owners thereof, their heirs, executors and assigns forever.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

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NORTH JERSEY HOLDING COMPANY.

By DAVID S. LEVY,

Vice President

SEAL

Attest:

A. LEVITON,  
Secretary.

CHRISTOPHORE CAPLANE (S. L.)

Signed, Sealed and  
Delivered in the  
Presence of:

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GEORGE M. KYPRIE  
Delivered in the  
Presence of:

GEORGE M. KYPRIE

AGREEMENT made and entered into this SIXTH day of JUNE, 1927 between NORTH JERSEY HOLDING COMPANY, a corporation of New Jersey, party of the first part; and P. CALATHES of 408 Lenox Avenue, New York City, N. Y. party of the second part;

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WITNESSETH: That the said party of the first part, in consideration of the sum of One (\$1.00) Dollar, and of the covenants, agreements and conditions hereinafter contained and agreed to be done and performed by the said party of the second part, and in further consideration of the sum of

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FIVE THOUSAND DOLLARS (\$5,000.00)



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10 agreed to be paid and satisfied by the said party of the second part, as hereinafter mentioned, the said party of the first part will well and sufficiently convey to the said party of the second part, his heirs or assigns, by deed of general warranty, a good and marketable title in fee simple, free from all encumbrances except as hereinafter stated, on or before June 14th, 1927;

20 All those certain lots of land in the Township of Teaneck in the County of Bergen and State of New Jersey, which on a certain map on file in the office of the Clerk of Bergen County entitled "Map of West Englewood Manor, West Englewood, N. J." made by Wm. C. Beuscher, C. E. & Surveyor, are known as lots numbered 5 in Block 263-Z as laid down on said map.

30 And the said party of the second part, for himself his heirs, executors, administrators, and assigns, do covenant, promise and agree, to and with said party of the first part, that he, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied unto the said party of the first part the sum of FIVE THOUSAND DOLLARS (\$5000.00) as and for the purchase money of the foregoing described lands, in the following manner, that is to say:

40 Upon the execution and delivery of this agreement, the receipt whereof is hereby acknowledged, beginning July 1st, party of the second part agrees to pay the party of the first part the balance at the rate of \$104.16 promptly on the first day of each and every month, with interest at 6% per annum on all unpaid balances then due, until the party of the second part shall have paid in, including the down payment of \$1250.00, the principal sum of \$5000.00.



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And the said party of the second part does further covenant and agree to assume and pay all taxes upon said lands from and after the date of this contract, and that the taxes thereon for the current year shall be adjusted and apportioned between the parties hereto as of the date hereof upon the closing of title.

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Said lands and premises are to be conveyed subject to any assessment for improvements made, unconfirmed or confirmed after the date hereof.

It is hereby mutually agreed between the parties hereto, that the deed so to be given by the said party of the first part to the said party of the second part, shall contain the following covenants on the part of the said party of the second part, his heirs, executors and assigns, and the following restrictions:

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(a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force.

(b) No house shall be erected without a cellar neither shall any house be erected upon any such lot, the cost of erection of which shall be less than \$8500.00.

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(c) There shall not be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline or oil selling station, garage, factory, or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same nor any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. Said lands,

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may, however, be used for stores or dwellings or both for the conduct therein of retail or wholesale business, not in violation of the aforesaid provisions.

10 (d) These covenants and restrictions shall run with the land and be binding upon all owners thereof, their heirs, executors and assigns, forever.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

NORTH JERSEY HOLDING COMPANY.

By DAVID S. LEVY,

SEAL

Vice President.

P. CALATHES, (S. L.)

20 Attest:

A. LEVITON,  
Secretary.

Signed, Sealed and  
Delivered in the  
Presence of:

GEORGE M. KYPRIE

30 AGREEMENT made and entered into this 18th day of October, 1927 between Charles Joseph, of 159 West 73rd Street, New York, party of the first part and George Kazepis and Nick Pinios, of 1254 Westchester Avenue and 1149 Webster Avenue., New York, respectively, parties of the second part.

40 WITNESSETH: that the said party of the first part, in consideration of the sum of ONE (\$1.00) Dollar, and of the covenants, agreements and conditions hereinafter contained and agreed to be done and performed by the said party of the second part, and in further consideration of the sum



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of Five Thousand Dollars, principal sum, together with the accrued interest to August 15th, 1927 of Fifty four dollars, agreed to be paid and satisfied by the said party of the second part, as hereinafter mentioned, the said party of the first part will well and sufficiently convey to the said party of the second part, their heirs or assigns, by deed of general warranty, a good and marketable title in fee simple, free from all encumbrances except as hereinafter stated, on or before November 30th, 1927;

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All those certain lots of land in the Township of Teaneck in the County of Bergen and State of New Jersey which on a certain map on file in the office of the Clerk of Bergen County entitled "Map of West Englewood Manor, West Englewood, N. J." made by Wm. C. Beuscher, C. E. & Surveyor, are known as lots numbered Three (3) in Block 263-Z as laid down on said map.

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And the said party of the second part, for their heirs, executors, administrators, and assigns, do covenant, promise and agree, to and with said party of the first part, that they the said party of the second part, will pay and satisfy, or cause to be paid and satisfied unto the said party of the first part the said sum of Five Thousand Dollars (\$5000.) principal sum and interest as and for the purchase money of the foregoing described lands, in the following manner, that is to say:

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Upon the execution and delivery of this agreement, the receipt whereof is hereby acknowledged, the sum of Two Hundred Dollars (\$200.).

Upon the closing of title as herein provided for, the sum of One Thousand Three Hundred Fifty the sum of One Thousand Three Hundred Fifty

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Dollars (\$1350.) plus accrued interest of Fifty Four Dollars (\$54).

10 By the said party of the second part assuming and taking over the said premises subject to the existing purchase money mortgage of \$3750., original amount, held by the North Jersey Holding Company, Inc. now a lien of record on the premises, on which mortgage there is now outstanding \$3450. payable in monthly installments of \$100. with accrued interest, beginning September 15th, 1927, until it shall have been reduced to \$2500. when it shall remain as a standing mortgage payable in a single sum on the 15th of December, 1929, interest in the meanwhile being payable semi-annually as described in said record.

20 And the said party of the second part does further covenant and agree to assume and pay all taxes upon said lands from and after the date of this contract, and that the taxes thereon for the current year shall be adjusted and apportioned between the parties hereto as of the date hereof, upon the closing of title.

30 Said lands and premises are to be conveyed subject to any assessment for improvements made unconfirmed or confirmed after the date hereof.

It is hereby mutually agreed between the parties hereto that the deed so to be given by the said party of the first part to the said party of the second part, shall contain the following covenants on the part of the said party of the second part, their heirs, executors and their assigns, and the following restrictions:

40 (a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the



*Bill of Complaint*

Township of Teaneck and now in force.

(b) No house shall be erected without a cellar, neither shall any house be erected upon any such lot, the cost of erection of which shall be less than \$8500.00.

(c) There shall be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline or oil selling station, garage, factory or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same nor any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. Said lands may, however, be used for stores or dwellings or both for the conduct therein of retail or wholesale business, not in violation of the aforesaid provisions.

(d) These covenants and restrictions shall run with the land and be binding upon all owners thereof, their heirs, executors and assigns, forever.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written

Charles Joseph  
(Typewritten)

CHARLES JOSEPH (Seal) (Signed)  
GEORGE KAZEPIS (S.L.)  
NICK G. PINIOS (S.L.)

Attest:

GEO. M. KYPRIE  
Signed, Sealed and  
Delivered in the  
Presence of:  
GEO. M. KYPRIE

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## In Chancery of New Jersey

77-86

10 Between GEORGE KAZEPIS,  
NICK G. PINIOS, MARGARITIS  
CHRISTON, CHRISTOPHORE CAP-  
LANE, PARRY JORDAN, CHARLES  
JOSEPH and PETER CALATHE,  
*Complainants,*

ON BILL, &amp;c.

—and—

NOTICE

20 NORTH JERSEY HOLDING COM-  
PANY,  
*Defendant.*

To: Messrs. Wright, Vander Burgh & McCarthy,  
Solicitors for complainants.

SIRS:

30 TAKE NOTICE that on Monday, November 17,  
1930, at ten o'clock in the forenoon of that day,  
or as soon thereafter as counsel can be heard, at  
the Chancery Chambers, No. 1 Exchange Place,  
Jersey City, N. J., we shall apply to the Chancellor  
for an order striking the bill of complaint herein  
on the following grounds:

1. That from the face of the bill of complaint  
it affirmatively appears that there is no cause of  
action stated against the defendant.

40 2. That from the said complaint it appears that  
the complainants are not entitled to any rescision  
of the contracts set out in the bill of complaint as  
a matter of law.



*Notice*

3. That the said complaint states no cause of action in that the representations alleged to have been made by the defendant to the complainants as alleged in the bill, are not material and do not entitle the complainants to rescind by reason thereof.

Yours & c.

10

GROSS & GROSS,  
Solicitors of the defendant.

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## In Chancery of New Jersey

77-86

10

Between GEORGE KAZEPIS, and  
others,

*Complainants,*

—and—

NORTH JERSEY HOLDING COM-  
PANY,

*Defendant.*

ON BILL, &c.

MEMORANDUM

20

MESSRS. WRIGHT, VANDER BURGH & MCCARTHY,  
for the Complainants.

MESSRS. GROSS & GROSS, for the Defendant.

(This memorandum is not to be published in  
the official or unofficial reports.)

## MEMORANDUM

30

BIGELOW, V. C.:—

40

This is a motion to strike out the bill of complaint on the ground that it sets forth no cause of action. The bill contains six counts, all substantially alike except that a different complainant is named in each one. The complainants severally agreed to purchase from the defendant, parcels of land in the Township of Teaneck, Bergen County. Pursuant thereto, deeds were delivered, purchase money mortgages given for a part of the consideration and the balance paid in cash. The bill seeks to avoid these transactions on the



*Memorandum*

ground of fraud. The only fraud alleged that I need notice, is this: That the defendant represented that the property was zoned to permit retail and wholesale business and the erection of stores, whereas the contrary was the fact, to the knowledge of defendant.

The contention of the defendant is that these representations were made prior to the adoption of the zoning amendment which added paragraph 5 to Section 6 of Article IV of the State Constitution or prior to the enactment of the zoning statute pursuant thereto, and therefore the zoning ordinance of Teaneck Township was void and the misrepresentation was immaterial. The zoning amendment was ratified by the voters of the State September 20, 1927, and was proclaimed a part of the Constitution by the Governor October 18, 1927. P. L. 1928, p. 820. The new zoning law was approved April 3, 1928. P. L. 1928, p. 274.

Each count of the bill alleges that the contract of sale was executed on a certain day and that the misrepresentation was made "prior" thereto. The counts respectively lay the execution of the contracts on October 18, August 2 and June 6, 1927, April 11, 1928, June 6, 1927 and October 18, 1927. When a representation is made to induce a party to enter into a contract and the contract is executed at a later day, the representation is impliedly re-affirmed. If it has become false in the meanwhile, the party making it should disaffirm his statement before the contract is executed. The fourth count in effect, therefore, charges misrepresentation as of a time subsequent to the enactment of the new zoning law.



*Memorandum*

10       The other counts relate to contracts executed before April 3, 1928. Counsel for defendant state that the effect of the decisions of the Supreme Court and Court of Errors and Appeals is that prior to that date all zoning ordinances prohibiting the erection of stores, or prohibiting wholesale or retail business, were void. I do not find it so stated in the reports. In each case, it has been said that the particular ordinance under review in relation to the property of the prosecutor was arbitrary and unreasonable and therefore void. As a practical matter, the zoning ordinance affecting the property in question was probably unreasonable and arbitrary, but I cannot assume as  
20       a matter of law that this was the case. On the contrary, the presumption is that the official action of the Township of Teaneck was valid, that there were peculiar circumstances which made the prohibition of stores or retail or wholesale business on this property a proper measure to secure the safety, health or welfare of the community. Hence, the argument for the defendant fails.

30       I do not, however, rest this decision solely upon this ground. Defendant represented falsely that the property was zoned to permit retail and wholesale business and the erection of stores. This was a material misrepresentation even though the zoning ordinance was invalid. In the first place, if the representation had been true, the purchasers could readily obtain building permits for the erection of stores and could have engaged in business on their property without trouble.  
40       But since the representation was false, it would have been necessary for them by mandamus or



*Memorandum*

other expensive litigation to establish the invalidity of the ordinance. The issuance of a mandamus is discretionary. After September 20, 1927, the Supreme Court generally refused these writs in zoning cases. Defendant was selling to complainants law suits of which the outcome was doubtful.

10

In the second place, the existence of the invalid ordinance indicated that the governing body of Teaneck was of the opinion that this property should be zoned against stores and that when and if authority was given to the municipality to pass a valid zoning ordinance, they would exercise it by prohibiting stores on the premises. A representation of an existing fact from which future action can be forecast with a reasonable degree of assurance is a material representation.

20

At the argument, counsel for defendant added to the grounds for striking the bill that it appeared therefrom that complainants were guilty of laches.

In each count, it is alleged that the purchaser did not know of the falsity of the representation until an ordinance re-zoning the Township was taken up by the Township Zoning Commission. The date is not stated. It also does not appear that the defendant has suffered from the delay. Mere lapse of time is usually not sufficient ground for refusing relief, where the defendant is not prejudiced because of a change in its position or the loss of evidence or otherwise.

30

The motion will be denied with costs.

40



## In Chancery of New Jersey

77-86

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Between GEORGE KAZEPIS,  
NICK G. PINIOS, MARGARITIS  
CHRISTON, CHRISTOPHORE CAP-  
LANE, PARRY JORDAN, CHARLES  
JOSEPH and PETER CALATHE,  
*Complainants,*

—and—

20

NORTH JERSEY HOLDING COM-  
PANY,  
*Defendant.*

ON BILL, &amp;c.

ORDER

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This matter being opened to the Court by Ben-  
jamin Gross in behalf of Gross & Gross, Solicitors  
for defendant, upon an application strike the  
amended bill of complaint heretofore filed, and  
after hearing the said Benjamin Gross in behalf  
of Gross & Gross, Solicitors of defendant, in behalf  
of said application and George I. Marcus, in be-  
half of Wright, Vander Burgh & McCarthy, Solici-  
tors for Complainants in opposition thereto, and  
no cause being shown or appearing to the con-  
trary, it is on this 24th day of November, 1930,

ORDERED that the application be and the same  
hereby is dismissed with costs.

Respectfully Advised:

JOHN O. BIGELOW,  
V. C.

40

E. R. WALKER,  
C.



## In Chancery of New Jersey

77-86

Between GEORGE KAZEPIS,  
NICK G. PINIOS, MARGARITIS  
CHRISTON, CHRISTOPHORE CAP-  
LANE, PARRY JORDAN, CHARLES  
JOSEPH and PETER CALATHE,

*Complainants,*

—and—

NORTH JERSEY HOLDING COM-  
PANY,

*Defendant.*

ON BILL, &c.

10

ANSWER OF  
DEFENDANT  
NORTH JERSEY  
HOLDING COM-  
PANY.

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The defendant, NORTH JERSEY HOLDING COMPANY,  
a corporation of the State of New Jersey, having  
its principal office in the City of Jersey City, Coun-  
ty of Hudson and State of New Jersey, answering  
the bill of complaint herein, says:

## ANSWER TO THE FIRST COUNT

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1. This defendant admits that prior to October  
18th, 1927, it was the owner of certain lands de-  
scribed in paragraph 1 of the first count of the bill  
of complaint, but it denies that it represented to  
the complainants George Kazepis and Nick G.  
Pinios, either by itself or through its agents, ser-  
vants and employees, that the said lands could be  
used for the erection of stores or dwellings or both,  
for the conduct thereon of retail and wholesale  
business. It denies that any representations were  
made as to the use to which the said lands could

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*Answer of Defendant*

10 be put, and further alleges that the said contract and the conveyance thereunder made were expressly made subject to the provisions and restrictions governing and controlling the use of the said lands, imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and then in force.

2. This defendant denies the allegations contained in paragraph 2 of the said first count of the bill of complaint, except that it admits that the said complainants and the defendant entered into a contract for the purchase of the said property.

3. It admits the allegations contained in paragraph 3 of the first count of the bill of complaint.

20 4. This defendant denies the allegations contained in paragraph 4 of the said first count of the bill of complaint. Further answering, this defendant says that the said property so sold was conveyed expressly subject to the provisions of any zoning ordinance of the Township of Teaneck, wherein the said property is located. Further answering the said allegations, this defendant says that the said zoning ordinances, at the time of the said contract and the conveyance thereunder  
30 made, were utterly null and void and of no effect, and did not, and could not prohibit or prevent the complainants from erecting any building containing stores for the contract of retail or wholesale business.

40 5. This defendant denies the allegations contained in paragraph 5 of the first count of the bill of complaint. This defendant, further answering, says that the said property in the contract referred to was to be conveyed, and was conveyed, subject to the provisions and restrictions of any



*Answer of Defendant*

ordinances of the Township of Teaneck. Further answering, this defendant says that any ordinances of the Township of Teaneck at the time of the making of the said agreement and the conveyance made thereunder, which prohibited the erection of any building containing stores and dwellings, or both, for the conduct of retail or wholesale business, were utterly null and void, and of no effect.

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6. This defendant denies the allegations contained in paragraph 6 of the first count of the bill of complaint.

7. This defendant denies the allegations contained in paragraph 6a of the first count of the bill of complaint. This defendant further alleges that the complainants were fully aware of the zoning ordinances of the Township of Teaneck and the provisions thereof, and were entirely familiar therewith.

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8. This defendant denies the allegations contained in paragraph 7 of the first count. Further answering, this defendant says that these complainants, with full knowledge of the provisions of the said zoning ordinances of the Township of Teaneck, and for a long time after the conveyance had been made by this defendant to the complainants, did not offer to reconvey the said property to the defendant, nor did they demand a return of the amount paid for the said conveyance, but on the contrary, the complainants, with knowledge of the facts aforesaid, continued to make payments upon the said purchase money mortgage, and to comply with the terms of the said contract, and the said purchase money mortgage so given by them to this defendant, and at no time did the

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*Answer of Defendant*

complainants demand of the defendant that the said contract be rescinded for any cause whatsoever. That the said complainants continued making payments upon the said purchase money mortgage, in accordance with the terms thereof, and with full knowledge of the conditions and the facts aforesaid, and for a long time continued to make such payments, with knowledge of the facts as aforesaid, and that by reason thereof this defendant was for a long time deprived of the market for the said lands so conveyed to the complainants, and could not sell or dispose of the said lands, nor receive the income thereof. By reason of the conduct of the said complainants as aforesaid, the said complainants are chargeable with laches, and are now estopped from asserting any rights against this defendant, and the said complainants have in all things, with full knowledge of the facts aforesaid, ratified the said agreement and the conveyance made thereunder.

9. This defendant denies the allegations contained in paragraph 8 of the first count of the bill of complaint, and says that no demand was ever made upon the defendant for a cancellation of the said mortgage and the repayment of the consideration to the complainants.

**ANSWER TO THE SECOND COUNT**

1. This defendant admits that prior to August 2nd, 1927, it was the owner of certain lands described in paragraph 1 of the second count of the bill of complaint, but it denies that it represented to the complainant, Margaritis Christon, either by itself or through its agents, servants and employees, that the said lands could be used for the



*Answer of Defendant*

erection of stores or dwellings or both, for the conduct thereon of retail and wholesale business. It denies that any representations were made as to the use to which the said lands could be put, and further alleges that the said contract and the conveyance thereunder made were expressly made subject to the provisions and restrictions governing and controlling the use of the said lands, imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and then in force.

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2. This defendant denies the allegations contained in paragraph 2 of the second count of the bill of complaint, except that it admits that the said complainants and the defendant entered into a contract for the purchase of the said property.

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3. This defendant admits the allegations contained in paragraph 3 of the second count of the bill of complaint.

4. This defendant denies the allegations contained in paragraph 4 of the said second count of the bill of complaint. Further answering, this defendant says that the said property so sold was conveyed expressly subject to the provisions of any zoning ordinance of the Township of Teaneck, wherein the said property is located. Further answering the said allegations, this defendant says that the said zoning ordinances, at the time of the said contract and the conveyance thereunder made, were utterly null and void and of no effect, and did not, and could not, prohibit or prevent the complainants from erecting any building containing stores for the conduct of retail or wholesale business.

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5. This defendant denies the allegations con-



*Answer of Defendant*

10      tained in paragraph 5 of the second count of the bill of complaint. This defendant, further answering, says that the said property in the contract referred to was to be conveyed, and was conveyed, subject to the provisions and restrictions of any ordinances of the Township of Teaneck. Further answering, this defendant says that any ordinances of the Township of Teaneck at the time of the making of the said agreement and the conveyance made thereunder, which prohibited the erection of any building containing stores and dwellings, or both, for the conduct of retail or wholesale business, were utterly null and void, and of no effect.

20      6. This defendant denies the allegations contained in paragraph 6 of the second count of the bill of complaint.

7. This defendant denies the allegations contained in paragraph 6a of the second count of the bill of complaint. This defendant further alleges that the complainants were fully aware of the zoning ordinances of the Township of Teaneck and the provisions thereof, and were entirely familiar therewith.

30      8. This defendant denies the allegations contained in paragraph 7 of the second count. Further answering, this defendant says that these complainants, with full knowledge of the provisions of the said zoning ordinances of the Township of Teaneck, and for a long time after the conveyance had been made by this defendant to the complainants, did not offer to reconvey the said property to the defendant, nor did they demand  
40      a return of the amount paid for the said conveyance, but on the contrary, the complainants, with



*Answer of Defendant*

knowledge of the facts aforesaid, continued to make payments upon the said purchase money mortgage, and to comply with the terms of the said contract, and the said purchase money mortgage so given by them to this defendant, and at no time did the complainants demand of the defendant that the said contract be rescinded for any cause whatsoever. That the said complainants continued making payments upon the said purchase money mortgage, in accordance with the terms thereof, and with full knowledge of the conditions and the facts aforesaid, and for a long time continued to make such payments, with knowledge of the facts as aforesaid, and that by reason thereof this defendant was for a long time deprived of the market for the said lands so conveyed to the complainants, and could not sell or dispose of the said lands, nor receive the income thereof. By reason of the conduct of the said complainants as aforesaid, the said complainants are chargeable with laches, and are now estopped from asserting any rights against this defendant, and the said complainants have in all things, with full knowledge of the facts aforesaid, ratified the said agreement and the conveyance made thereunder.

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9. This defendant denies the allegations contained in paragraph 8 of the second count of the bill of complaint, and says that no demand was ever made upon the defendant for a cancellation of the said mortgage and the repayment of the consideration to the complainants.

## ANSWER TO THE THIRD COUNT

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1. This defendant admits that prior to June



*Answer of Defendant*

10 6th, 1928, it was the owner of certain lands described in paragraph 1 of the third count of the bill of complaint, but it denies that it represented to the complainant Christophore Caplane, either by itself or through its agents, servants and employees, that the said lands could be used for the erection of stores or dwellings or both, for the conduct thereon of retail and wholesale business. It denies that any representations were made as to the use to which the said lands could be put, and further alleges that the said contract and the conveyance thereunder made were expressly made subject to the provisions and restrictions governing and controlling the use of the said lands, imposed by any zoning or municipal ordinance  
20 adopted by the Township of Teaneck and then in force.

2. This defendant denies the allegations contained in paragraph 2 of the third count of the bill of complaint, except that it admits that the said complainants and defendant entered into a contract for the purchase of the said property.

3. This defendant admits the allegations contained in paragraph 3 of the third count of the bill  
30 of complaint.

4. This defendant denies the allegations contained in paragraph 4 of the said third count of the bill of complaint. Furthermore answering, this defendant says that the said property so sold was conveyed expressly subject to the provisions of any zoning ordinance of the Township of Teaneck, wherein the said property is located. Further answering the said allegations, this defendant  
40 says that the said zoning ordinances, at the time of the said contract and the conveyance there-



*Answer of Defendant*

under made, were utterly null and void and of no effect, and did not, and could not, prohibit or prevent the complainants from erecting any building containing stores for the conduct of retail or wholesale business.

5. This defendant denies the allegations contained in paragraph 5 of the third count of the bill of complaint. This defendant, further answering, says that the said property in the contract referred to was to be conveyed, and was conveyed, subject to the provisions and restrictions of any ordinances of the Township of Teaneck. Further answering, this defendant says that any ordinances of the Township of Teaneck at the time of the making of the said agreement and the conveyance made thereunder, which prohibited the erection of any building containing stores and dwellings, or both, for the conduct of retail or wholesale business, were utterly null and void, and of no effect.

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6. This defendant denies the allegations contained in paragraph 6 of the third count of the bill of complaint.

7. This defendant denies the allegations contained in paragraph 6a of the third count of the bill of complaint. This defendant further alleges that the complainants were fully aware of the zoning ordinances of the Township of Teaneck and the provisions thereof, and were entirely familiar therewith.

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8. This defendant denies the allegations contained in paragraph 7 of the third count. Further answering, this defendant says that these complainants, with full knowledge of the provisions of the said zoning ordinances of the Township of Teaneck, and for a long time after the conveyance

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*Answer of Defendant*

10 had been made by this defendant to the complainants, did not offer to reconvey the said property to the defendant, nor did they demand a return of the amount paid for the said conveyance, but on the contrary, the complainants, with knowledge of the facts aforesaid, continued to make payments upon the said purchase money mortgage, and to comply with the terms of the said contract, and the said purchase money mortgage so given by them to this defendant, and at no time did the complainants demand of the defendant that the said contract be rescinded for any cause whatsoever. That the said complainants continued making payments upon the said purchase money mortgage, in accordance with the terms thereof, and with full knowledge of the conditions and the facts aforesaid, and for a long time continued to make such payments, with knowledge of the facts as aforesaid, and that by reason thereof this defendant was for a long time deprived of the market for the said lands so conveyed to the complainants, and could not sell or dispose of the said lands, nor receive the income thereof. By reason of the conduct of the said complainants as aforesaid, the said complainants are chargeable with laches, and are now estopped from asserting any rights against this defendant, and the said complainants, have in all things, with full knowledge of the facts aforesaid, ratified the said agreement and the conveyance made thereunder.

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9. This defendant denies the allegations contained in paragraph 8 of the third count of the bill of complaint, and says that no demand was ever made upon the defendant for a cancellation of the

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*Answer of Defendant*

said mortgage and the repayment of the consideration to the complainants.

## ANSWER TO THE FOURTH COUNT

1. This defendant admits that prior to April 11th, 1928, it was the owner of certain lands described in paragraph 1 of the fourth count of the bill of complainant, but it denies that it represented to the complainants Christophore Caplane and Parry Jordan, either by itself or through its agents, servants and employees, that the said lands could be used for the erection of stores or dwellings or both, for the conduct thereon of retail and wholesale business. It denies that any representations were made as to the use to which the said lands could be put, and further alleges that the said contract and the conveyance thereunder made were expressly made subject to the provisions and restrictions governing and controlling the use of the said lands, imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and then in force.

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2. This defendant denies the allegations contained in paragraph 2 of the fourth count of the bill of complaint, except that it admits that the said complainants and the defendant entered into a contract for the purchase of the said property.

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3. This defendant admits the allegations contained in paragraph 3 of the fourth count of the bill of complaint.

4. This defendant denies the allegations contained in paragraph 4 of the said fourth count of the bill of complaint. Further answering, this defendant says that the said property so sold was conveyed expressly subject to the provisions of any zoning ordinance of the Township of Teaneck,

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*Answer of Defendant*

10 wherein the said property is located. Further answering the said allegations, this defendant says that the said zoning ordinances, at the time of the said contract and the conveyance thereunder made, were utterly null and void and of no effect, and did not, and could not, prohibit or prevent the complainants from erecting any building containing stores for the conduct of retail or wholesale business.

20 5. This defendant denies the allegations contained in paragraph 5 of the fourth count of the bill of complaint. This defendant, further answering, says that the said property in the contract referred to was to be conveyed, and was conveyed, subject to the provisions and restrictions of any ordinances of the Township of Teaneck. Further answering, this defendant says that any ordinances of the Township of Teaneck at the time of the making of the said agreement and the conveyance made thereunder, which prohibited the erection of any building containing stores and dwellings, or both, for the conduct of retail or wholesale business, were utterly null and void, and of no effect.

30 6. This defendant denies the allegations contained in paragraph 6 of the fourth count of the bill of complaint.

40 7. This defendant denies the allegations contained in paragraph 6a of the fourth count of the bill of complaint. This defendant further alleges that the complainants were fully aware of the zoning ordinances of the Township of Teaneck and the provisions thereof, and were entirely familiar therewith.

8. This defendant denies the allegations con-



*Answer of Defendant*

tained in paragraph 7 of the fourth count. Further answering, this defendant says that these complainants, with full knowledge of the provisions of the said zoning ordinance of the Township of Teaneck, and for a long time after the conveyance had been made by this defendant to the complainants, did not offer to reconvey the said property to the defendant, nor did they demand a return of the amount paid for the said conveyance, but on the contrary, the complainants, with knowledge of the facts aforesaid, continued to make payments upon the said purchase money mortgage, and to comply with the terms of the said contract, and the said purchase money mortgage so given by them to this defendant, and at no time did the complainants demand of the defendant that the said contract be rescinded for any cause whatsoever. That the said complainants continued making payments upon the said purchase money mortgage, in accordance with the terms thereof, and with full knowledge of the conditions and the facts aforesaid, and for a long time continued to make such payments, with knowledge of the facts as aforesaid, and that by reason thereof this defendant was for a long time deprived of the market for the said lands so conveyed to the complainants, and could not sell or dispose of the said lands, nor receive the income thereof. By reason of the conduct of the said complainants as aforesaid, the said complainants are chargeable with laches, and are now estopped from asserting any rights against this defendant, and the said complainants have in all things, with full knowledge of the facts aforesaid, ratified the said agreement and the conveyance made thereunder.

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*Answer of Defendant*

10       9. This defendant denies the allegations contained in paragraph 8 of the fourth count of the bill of complaint, and says that no demand was ever made upon the defendant for a cancellation of the said mortgage and the repayment of the consideration to the complainants.

## ANSWER TO THE FIFTH COUNT

20       1. The defendant admits that prior to June 6th, 1927, it was the owner of certain lands described in paragraph 1 of the fifth count of the bill of complaint, but it denies that it represented to the complainant Peter Calathes, either by itself or through its agents, servants and employees, that the said lands could be used for the erection of stores or dwellings or both, for the conduct thereon of retail and wholesale business. It denies that any representations were made as to the use to which the said lands could be put, and further alleges that the said contract and the conveyance thereunder made were expressly made subject to the provisions and restrictions governing and controlling the use of the said lands, imposed by any zoning or municipal ordinance adopted by the  
30       Township of Teaneck and then in force.

      2. This defendant denies the allegations contained in paragraph 2 of the fifth count of the bill of complaint, except that it admits that the said complainants and the defendant entered into a contract for the purchase of the said property.

      3. This defendant admits the allegations contained in paragraph 3 of the fifth count of the bill of complaint.

40       4. This defendant denies the allegations contained in paragraph 4 of the said fifth count of



*Answer of Defendant*

the bill of complaint. Further answering, this defendant says that the said property so sold was conveyed expressly subject to the provisions of any zoning ordinance of the Township of Teaneck, wherein the said property is located. Further answering the said allegations, this defendant says that the said zoning ordinances, at the time of the said contract and the conveyance thereunder made, were utterly null and void and of no effect, and did not, and could not, prohibit or prevent the complainants from erecting any building containing stores for the conduct of retail or wholesale business.

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5. This defendant denies the allegations contained in paragraph 5 of the fifth count of the bill of complaint. This defendant, further answering, says that the said property in the contract referred to was to be conveyed, and was conveyed, subject to the provisions and restrictions of any ordinances of the Township of Teaneck. Further answering, this defendant says that any ordinances of the Township of Teaneck at the time of the making of the said agreement and the conveyance made thereunder, which prohibited the erection of any building containing stores and dwellings, or both, for the conduct of retail or wholesale business, were utterly null and void, and of no effect.

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6. This defendant denies the allegations contained in paragraph 6 of the fifth count of the bill of complaint.

7. This defendant denies the allegations contained in paragraph 6a of the fifth count of the bill of complaint. This defendant further alleges that the complainants were fully aware of the zoning

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*Answer of Defendant*

ordinances of the Township of Teaneck and the provisions thereof, and were entirely familiar therewith.

10        8. This defendant denies the allegations contained in paragraph 7 of the fifth count. Further answering, this defendant says that these complainants, with full knowledge of the provisions of the said zoning ordinances of the Township of Teaneck, and for a long time after the conveyance had been made by this defendant to the complainants, did not offer to reconvey the said property to the defendant, nor did they demand a return of the amount paid for the said conveyance, but on the contrary, the complainants, with  
20        knowledge of the facts aforesaid, continued to make payments upon the said purchase money mortgage, and to comply with the terms of the said contract, and the said purchase money mortgage so given by them to this defendant, and at no time did the complainants demand of the defendant that the said contract be rescinded for any cause whatsoever. That the said complainants continued making payments upon the said  
30        purchase money mortgage, in accordance with the terms thereof, and with full knowledge of the conditions and the facts aforesaid, and for a long time continued to make such payments, with knowledge of the facts as aforesaid, and that by reason thereof this defendant was for a long time deprived of the market for the said lands so conveyed to the complainants, and could not sell or dispose of the said lands, nor receive the income thereof. By reason of the conduct of the said  
40        complainants as aforesaid, the said complainants are chargeable with laches, and are now estopped



*Answer of Defendant*

from asserting any rights against this defendant, and the said complainants have in all things, with full knowledge of the facts aforesaid.

9. This defendant denies the allegations contained in paragraph 8 of the fifth count of the bill of complaint, and says that no demand was ever made upon the defendant for a cancellation of the said mortgage and the repayment of the consideration to the complainants.

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## ANSWER TO THE SIXTH COUNT

1. The defendant admits that prior to October 18th, 1927, it was the owner of certain lands described in paragraph 1 of the sixth count of the bill of complaint, but it denies that it represented to the complainants or Charles Joseph, either by itself or through its agents, servants and employees, that the said lands could be used for the erection of stores or dwellings or both, for the conduct thereon of retail and wholesale business. It denies that any representations were made as to the use to which the said lands could be put, and further alleges that the said contract and the conveyances thereunder made were expressly made subject to the provisions and restrictions governing and controlling the use of the said lands, imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and then in force.

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2. This defendant denies the allegations contained in paragraph 2 of the sixth count of the bill of complaint, except that it admits that the said Charles Joseph and the defendant entered into a contract for the purchase of the said property.

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3. This defendant admits the allegations con-



*Answer of Defendant*

tained in paragraph 3 of the sixth count of the bill of complaint.

10        4. This defendant denies the allegations contained in paragraph 4 of the said sixth count of the bill of complaint. Further answering, this defendant says that the said property so sold was conveyed expressly subject to the provisions of any zoning ordinance of the Township of Teaneck, wherein the said property is located. Further answering the said allegations, this defendant says that the said zoning ordinances, at the time of the said contract and the conveyance thereunder made, were utterly null and void and of no effect, and did not, and could not, prohibit or prevent  
20        the complainants from erecting any building containing stores for the conduct of retail or wholesale business.

5. This defendant denies the allegations contained in paragraph 5 of the sixth count of the bill of complaint. This defendant, further answering, says that the said property in the contract referred to was to be conveyed, and was conveyed, subject to the provisions and restrictions of any ordinances of the Township of Teaneck. Further answering, this defendant says that any ordinances  
30        of the Township of Teaneck at the time of the making of the said agreement and the conveyance made thereunder, which prohibited the erection of any building containing stores and dwellings, or both, for the conduct of retail or wholesale business, were utterly null and void, and of no effect.

40        6. This defendant has no knowledge or information sufficient to form a belief as to the matters



*Answer of Defendant*

contained in paragraph 6 of the sixth count, but leaves the complainants to the proof thereof.

7. This defendant denies the allegations contained in paragraph 7 of the sixth count. Further answering, this defendant says that the cause of action herein alleged by the complainant is not properly or legally assignable from the said Charles Joseph to the said George Kazepis and Nick G. Pinios.

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8. This defendant denies the allegations contained in paragraph 8 of the sixth count of the bill of complaint herein. Further answering, this defendant says that no demand ever was made upon it by either the said Charles Joseph or the said complainants for a repayment of the purchase price on the said premises, or for the cancellation of the said mortgage therein alleged. This defendant, further answering, says that the said Charles Joseph, with full knowledge of the facts, and the complainants with full knowledge of the facts and of the existence of the provisions of the said zoning ordinances in the Township of Teaneck, continued to make payments upon the said purchase money mortgage held by the defendant, and for a long time thereafter continued to make such payments, and continued in the possession and control and ownership of the said property. That the said Charles Joseph, with full knowledge of the said facts as aforesaid, and after making payments on account of the said purchase money mortgage of both principal and interest, thereafter conveyed the said property to the said complainants. That by reason thereof, and by reason of the continued ownership of the said property by the said Charles Joseph and the

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*Answer of Defendant*

10 complainants, this defendant was deprived of the market therefor, and could not sell or dispose of the said property, and had no control over it or possession thereof, to the detriment of this defendant. That by reason thereof, the said Charles Joseph and the complainants are guilty of laches, and are now estopped from asserting any rights by reason thereof. That by reason of the afore-  
20 said, the said Charles Joseph and the complainants, having full knowledge of the facts as afore-said, have in all things ratified and confirmed the said contract and the conveyance made thereunder. This defendant further alleges that at no time did the said Charles Joseph or the complainants demand a rescision of the contract or the conveyance made thereunder.

9. This defendant denies the allegations contained in paragraph 9 of the sixth count of the bill of complaint herein. Further answering, this defendant says that neither the said Charles Joseph nor the complainants herein at any time demanded the cancellation of the mortgage herein, nor did the said Charles Joseph or the complainants demand the repayment of the consideration for  
30 the said conveyance.

SECOND ANSWER TO THE SIXTH COUNT  
IN POINT OF LAW

1. This defendant further answering the said sixth count, as alleged in the bill of complaint, will object upon the hearing hereof that the said sixth count does not state a cause of action, in that the said claim sued upon is one not assignable in  
40 law by the said Charles Joseph to the complainants herein.



*Answer of Defendant*

This defendant prays to be hence dismissed with its costs.

GROSS & GROSS,  
Solicitors of Defendant.

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## In Chancery of New Jersey

77-86

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Between GEORGE KAZEPIS,  
NICK G. PINIOS, MARGARITIS  
CHRISTON, CHRISTOPHORE CAP-  
LANE, PARRY JORDAN, CHARLES  
JOSEPH and PETER CALATHE,  
*Complainants,*

—and—

20

NORTH JERSEY HOLDING COM-  
PANY,

*Defendant.*

ON BILL &amp;c

REPLICATION

The Complainants join issue on the answer of  
the Defendant.

WRIGHT, VANDER BURGH & MCCARTHY,  
Solicitors for Complainants.

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## In Chancery of New Jersey

77-86

Between GEORGE KAZEPIS,  
NICK G. PINIOS, MARGARITIS  
CHRISTON, CHRISTOPHORE CAP-  
LANE, PARRY JORDAN, CHARLES  
JOSEPH and PETER CALATHE,

*Complainants,*

—and—

NORTH JERSEY HOLDING COM-  
PANY,

*Defendant.*

10

ON BILL, &amp;c.

ORDER OF  
REFERENCE

20

This matter being opened to the Court by  
Wright, Vander Burgh & McCarthy, solicitors for  
and of counsel with the complainants, and Gross  
and Gross, solicitors of and of counsel with the  
defendant, and upon reading the consent hereto  
underwritten;

30

IT IS THEREUPON on this 29th day of December,  
A. D. nineteen hundred and thirty,

ORDERED that the above stated cause be referred  
to HON. J. O. BIGELOW, one of the Vice Chancellors  
of this Court, to hear the same for the Chancellor

40



*Order of Reference*

and to report thereon to him and advise what order or decree should be made therein.

WRIGHT, VANDER BURGH & MCCARTHY,  
E. R. WALKER, (Signed)  
C.

10 We consent to the making of the above order.  
WRIGHT, VANDER BURGH & MCCARTHY,  
Solicitors of Complainants.  
GROSS & GROSS,  
Solicitors of Defendant.

A true copy  
Ferd Garretson  
Clerk

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## In Chancery of New Jersey

Between  
 GEORGE KAZEPIS and others,  
*Complainants,*  
 and  
 North Jersey Holding Com-  
 pany,  
*Defendant.*

ON BILL, &amp;c.

77/86

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TRANSCRIPT OF SHORTHAND NOTES OF TESTIMONY  
 taken in the above entitled cause before His Honor

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John O. Bigelow, Vice Chancellor, at Chancery  
 Chambers, Jersey City, on March 23, 1931.

### APPEARANCES.

Messrs. Wright, Vander Burgh & McCarthy,  
 (George I. Marcus, Esq.,) for the Complainants.

Messrs. Gross & Gross (Benjamin Gross, Esq.,)  
 for the Defendant.

### COMPLAINANTS' CASE

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CLARA CHRISTIANSON, being duly sworn as  
 a witness on behalf of the complainants, testifies  
 as follows:

DIRECT EXAMINATION BY MR. VANDER BURGH.

Q. You are employed in the Borough Clerk's  
 Office in the Township of Teaneck?

A. I am.

Q. And have been for how long?

A. Going on six years.

Q. Have you charge of the Ordinance Book?

A. Yes, sir; I have.

40



*Clara Christianson, Direct*

Q. The original ordinance book?

A. Yes, sir.

Q. I show you a book and ask you if it is the book?

A. Yes, sir.

10 Q. Turn to the Ordinance from page 6 to page 21.

A. That is in the other book.

Q. What was the date of the passage of that ordinance?

A. September 29, 1921; and that is the map (indicating).

20 Q. I show you a map called the Zoning Map, Bergen County, New Jersey, accompanying this ordinance of 1921, and ask you if that is the original map accompanying that ordinance?

A. It is.

Mr. Vander Burgh: I offer this map—

Mr. Gross: I object. There has been no proof thus far that the ordinance or map attempted to be offered in evidence has any reference to the property sold.

30 The Court: Does it appear from the pleadings where the property is?

Mr. Gross: Not with any great detail of reference.

The Court: It is admitted in the answer that the property is in Teaneck Township. The question is whether the lot is in plot 533 showing on the map of West Englewood Manor is one of the lots shown on this map.

Mr. Gross: Exactly my objection.

40 Mr. Vander Burgh: Of course we have the original map.

The Court: Do you expect to connect it up? I overrule the objection.



*Clara Christianson, Direct*

(Map admitted in evidence as Exhibit C-1, but not marked.)

Mr. Vander Burgh: I offer the zoning ordinance of 1921 and ask that it be marked.

The Court: Have you a copy of this ordinance?

Mr. Vander Burgh: I will show it to the Court. I have a copy of the more recent ordinance.

The Court: What is the book?

Mr. Vander Burgh: The official.

The Court: You do not want to leave it here?

Mr. Gross: I desire to object upon the same ground.

The Court: I overrule your objection. (Ordinance of 1921 admitted in evidence as Exhibit C-2, but not marked.)

Q. Does this ordinance, Exhibit C-2, cover all the property in the Township of Teaneck?

A. I believe it does.

Q. And this ordinance covers all the property in the Township of Teaneck?

A. Yes, sir.

Q. Turn to the zoning ordinance passed September 10, 1928; is that the date of the passage of the ordinance?

A. It was adopted on the 25th, September 25th. I think that is the date. It was introduced on the 10th and adopted on the 25th.

Q. Of September, 1929?

A. That is right.

Mr. Vander Burgh: I offer that in evidence.

Mr. Gross: I object upon the ground that the ordinance was passed long after the sign-



*Nicholas T. Agnides, Direct*

ing of the contract involved in this suit and long after the deed.

Mr. Vander Burgh: The object is to show that at no time has this property been zoned for business purposes.

10

(Ordinance admitted in evidence as Exhibit C-3.)

Q. I show you a printed chart with a map and ordinance and ask you if that is a true copy of the 1929 ordinance?

A. It is.

Mr. Vander Burgh: Have you any objection, Mr. Gross, to using this instead of the original?

20

Mr. Gross: No.

Mr. Marcus: We offer at this time a file map of the property known as the Map of West Englewood Manor, West Englewood, New Jersey, this being the original map on file in the office of the Clerk of the County of Bergen.

The Court: Have you a copy?

Mr. Marcus: We expect to have one.

30

(Map admitted in evidence and marked Exhibit C-4.)

NICHOLAS T. AGHNIDES, being duly sworn as a witness on behalf of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. VANDER BURGH.

Q. Do you know all of the complainants in this action?

A. I do.

Q. How long have you known them?

40

A. I have known them, ome of them, over ten years, others a shorter time.



*Nicholas T. Aghnides, Direct*

Q. Do you know Mr. Kazepis?

A. Yes; I know him very well.

Q. Prior to 1927 did you know him?

A. I knew him from the other side; we have been very close friends.

Q. During the year 1927 and thereafter did you know who he worked for?

10

A. I do.

Q. For whom?

A. North Jersey —

Mr. Gross: I object, if The Court please.  
It is purely hearsay if he is going to tell what Kazepis told him.

BY THE COURT:

Q. How do you know Mr. Kazepis?

20

A. He is a friend of mine and before he went into real estate he asked my advice and he told me where he was working.

Q. Have you any knowledge of where he worked outside of what he told you?

A. I went to his place and saw where he worked.

Q. Was there a sign?

A. Yes.

Q. What did it say?

A. Hudson & West Shore Realty Corporation.

30

BY MR. VANDER BURGH:

Q. Did you know the name of the corporation at the time they entered into the contract for these lots?

A. I did.

Q. Was Mr. Kazepis also with you?

A. Not in every instance.

Q. Did Mr. Kazepis suggest—did you have any conversation with Mr. Kazepis about the sale of the lots to these complainants?

40



*Nicholas T. Agnides, Cross*

A. Yes.

Q. When was this?

A. In 1927.

Q. Where?

10 A. I believe in my home; I cannot recall the place.

Q. Did you subsequently go to the property on Anderson Road in Teaneck with Mr. Kazepis?

A. I did.

Q. With any of the complainants?

A. Yes.

Q. Which one?

A. Christon and a friend of Mr. Kazepis.

Q. And what was said?

20 Mr. Gross: I object.

The Court: Objection sustained.

Q. Who negotiated the sale of those lots if you know?

A. Mr. Kyprie.

Q. For whom?

Mr. Gross: I object, if Your Honor please. The agent himself couldn't testify. I object. It calls for hearsay.

The Court: I will allow it.

30 A. Mr. Kipperry negotiated the sale on the part of the owner.

The Court: I will permit you to cross examine the witness on the source of his knowledge.

CROSS EXAMINATION BY MR. GROSS.

Q. Kipperry told you he negotiated the sale for the owners?

A. Not only that, but he showed me the receipt.

40 Q. Which he gave to whom?

A. To the buyers.



*Nicholas T. Aghnides, Direct*

DIRECT EXAMINATION BY MR. VANDER BURGH.

Q. Were you present at the time Kazepis or Christon talked with Kyprie about these lots?

Mr. Gross: I object. It calls for hearsay.

The Court: The question was: Was he present? I overrule the objection.

10

A. I was.

Q. What was said at that time by Kyprie that you heard regarding these lots?

The Court: I will sustain the objection. It has not been sufficiently established that this man was an agent and I will grant the motion of defendant's counsel strike out testimony of this witness that Kyprie was acting on behalf of the defendant.

20

Q. Are you familiar with the handwriting of Mr. Kyprie?

A. Yes, sir.

Q. I show you an agreement dated October 18, 1917, between the North Jersey Holding Company and George Kazepis and Nicolas G. Pinios and ask you if that is the signature of Mr. Kyprie in the lower lefthand corner?

A. Yes, that is his signature.

30

Mr. Vander Burgh: I offer it in evidence.

(Said agreement admitted in evidence and marked Exhibit C-5.)

Q. Is this man who witnessed this contract the same Joseph Kyprie you referred to?

A. Yes, sir.

Q. Was he the one who negotiated this contract?

A. Yes, sir.

Q. On behalf of whom, if you know?

40

Mr. Gross: I object.



*Margaritis Christon, Direct*

The Court: Objection sustained.

MARGARITIS CHRISTON, one of the complainants, being duly sworn on behalf of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. VANDER BURGH:

10 Q. You are one of the complainants in this case?

A. Yes, sir.

Q. I show you a contract dated August 2, 1927, between North Jersey Holding Company and Margaritis Christon.

A. Yes, sir.

Q. And ask if that is your signature to the contract?

A. Yes, sir.

20 Q. I show you George Kyprie's signature on that contract.

A. Yes, sir.

Q. Did you have any dealings with Kyprie in regard to this contract?

A. What do you mean?

Q. Who sold you these lots?

A. Mr. Kyprie.

Q. When did you first see Mr. Kyprie?

A. He came to me two or three times.

30 Q. What did he say?

BY THE COURT.

Q. You had some talk with Mr. Kyprie about this land?

A. Yes, sir.

Q. Did you have any talk with anyone else before you signed the contract?

A. Before signing the contract, no.

40 Q. How did you happen to go to New York to this office where you saw Mr. Levy?

A. Mr. Kyprie asked me to go.



*Margaritis Christon, Direct*

Q. As a result of what Mr. Kyprie told you?

A. Yes, sir.

Q. Before you went there did you agree on the terms of the purchase?

A. I did.

Q. And until you went over there and signed the contract nothing was said except your talk with Mr. Kyprie?

10

A. Yes, sir.

Q. And that is the contract you have there?

A. Yes, sir.

The Court: I think it shows agency.

BY MR. VANDER BURGH:

Q. Did Mr. Kyprie take you out to see this property before you signed this written agreement?

20

A. Yes, sir.

Q. Once or more often?

A. I went over with him two or three times.

Q. How did you go?

A. By automobile.

Q. Whose automobile?

A. Once in Kyprie's automobile and I drove him myself in my own car.

Q. Did anyone accompany you other than Mr. Kyprie? Did anyone else go?

30

A. Yes, sir; on two or three different occasions Mr. Agnides and also Mr. Gascomas.

Q. What if anything, did Mr. Kyprie tell you in regard to the use you could put the lot which you purchased?

Mr. Gross: I object.

The Court: Objection overruled.

A. Mr. Kyprie told me two or three times when I went to see the property that that part was the only business lots, the lots he was going to sell

40



*Margaritis Christon, Direct*

me, the only business lots on this side of the track.

Q. Did these lots back right up to the railroad?

A. Yes, sir.

10 Q. They are the only property between Windsor road and the railroad track?

A. The only property.

Q. Did he say anything else in connection with the property?

A. He told me that they were the only business lots and that I could build on them any time I wanted to.

Q. Build what?

A. Stores; if I had \$10,000.

20 BY THE COURT:

Q. What would you do with \$10,000?

A. I would find someone to finance it, to rent them. Those were the only business lots where I could build.

BY MR. VANDER BURGH:

Q. Did he say anything about the property as distinguished from other lots in the neighborhood?

A. Yes, sir.

30 Q. What did he say as to that?

A. He told me that the residential lots were much cheaper.

Q. What did you pay for that lot?

A. \$5,000.

BY THE COURT:

Q. How big a lot?

A. 50 by 100 feet.

BY MR. VANDER BURGH:

40 Q. Property in that neighborhood is entirely vacant, is it not?

A. This lot is vacant.



*Margaritis Christon, Direct*

Q. Is the street built up at that place?

A. Windsor Road is not built up at that place.

Q. Did he give you any prices for the lots on the other side of the street?

A. He mentioned the price of the residential lots, I am not sure, I think it was \$800, or \$1,000. It was a big difference.

10

Q. On the same side of the street or the other side?

A. On the opposite side of the street.

Q. When did you first discover that these lots were zoned against business?

A. Mr. Aghnides and I tried to put in stores with Mr. Pinios and we went over to make certain that these were the only business lots.

20

Q. Mr. Pinios?

A. Yes, sir; we drove together to the place.

Q. To where?

A. To the lots; in my automobile. We asked, in the office, Reiss & Reiss, real estate people —

By THE COURT:

Q. Where was this?

A. On the other side of the lots.

Mr. Vander Burgh: I will withdraw that.

Strike out the part referring to Reiss & Reiss.

30

By MR. VANDER BURGH:

Q. As a result of your inquiry you discovered what?

A. We went to the Teaneck County Clerk's Office, the Assistant Engineer, or the Chief Engineer, where they file the maps, and we found that this section was zoned against business.

By THE COURT:

Q. When was this?

40

A. This was about the first part of February, 1929.



*Margaritis Christon, Direct*

BY MR. VANDER BURGH:

Q. What did you do when you discovered that?

A. When I discovered that I just notified all the boys, all the friends I knew whose lots were not business lots, and I went to Mr. Lerner.

10 Q. Who is Mr. Lerner?

A. He is my attorney.

Q. A New York attorney?

A. Yes.

Q. The gentleman sitting here (indicating)?

A. Yes, sir.

Q. How long after you discovered this fact did you go to Mr. Lerner?

A. Immediately.

20 Q. The next day or within a week or how long?

A. Two or three days.

Q. From then on Mr. Lerner handled the matter?

A. From then on Mr. Lerner handled the matter, yes, sir.

Q. Did you subsequently get a deed for this lot?

A. Yes, I did.

30 Q. I show you a deed dated November 1st, 1927, from the North Jersey Holding Company to Margaritis Christon, and ask if that is the deed to which you refer?

A. Yes, sir.

Mr. Vander Burgh: I offer that in evidence.

(Deed admitted in evidence and marked C-6).

40 Q. How much money did you pay to the North Jersey Holding Company for this lot?

A. I paid \$2500 so far.



*Margaritis Christon, Direct*

Q. In cash?

A. Yes, sir.

Q. Did you also give a bond and mortgage, a purchase money bond and mortgage?

A. Yes, sir.

Q. In what amount?

A. \$2500.

10

BY THE COURT:

Q. Making \$4500 altogether?

A. Yes, sir.

BY MR. VANDER BURGH:

Q. Was there more than one lot purchased by you?

A. Two lots.

Q. The price of the two lots was \$5,000?

A. Yes, sir; \$5,000.

20

Q. Was that for one lot or two lots?

A. Two lots, 100 feet front.

Q. Who handled the money end of this transaction for you, — Mr. Lerner?

A. Myself. I made a special contract, different from the other ones. I was referred to a gentleman by the name of Levy, the vice president.

Q. Referring to this contract covering part of the purchase price, \$5,000, I call your attention to the fact that the mortgage is \$3,750; does that refresh your recollection?

30

A. The mortgage was changed by that gentleman. It was special arrangements I made with that gentleman.

Q. You paid \$25,000 down?

A. Yes, sir; so I could get my deed.

Q. Did you also pay interest on the new mortgage?

40

A. I paid the rest to Mr. Lerner.

Q. He knows the amount?



*Margaritis Christon, Direct*

A. Yes, sir.

Q. I show you check on the Irving Trust Company, dated February 23, 1929, payable to the order of the Trust Company of Jersey City, in the amount of \$112.50, and ask you if that has anything to do with that transaction?

10

A. Yes, sir.

Q. For the payment of interest?

A. Yes, sir.

Mr. Vander Burgh: I offer that in evidence.

(Check admitted in evidence and marked C-7.)

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Mr. Vander Burgh: It is admitted that the letter I now offer in evidence is a letter of transmittal for that check.

(Letter admitted in evidence and marked Exhibit C-8.)

Q. Mr. Christon, did you at any time after discovering that this property was not business property, talk to Mr. Levy, the vice president of the North Jersey Holding Company?

30

A. We went over with Mr. Aghnides to the office in New York.

Q. What address?

A. I don't remember. I went to their office and I saw a different gentleman, not this gentleman, a smaller gentleman, and we told him that the lots were not for business.

Mr. Gross: I object.

Q. Do you remember his name?

A. Levitan.

40

Mr. Vander Burgh: Do you admit that Mr. Levitan was an officer?

Mr. Gross: Not at that time; not authorized to bind the company.



*Margaritis Christon, Cross*

Mr. Vander Burgh: The contract he signed as secretary.

Mr. Gross: He might be secretary but he had no authority.

The Court: Is the contract in evidence?

Mr. Vander Burgh: Yes, sir.

The Court: With the consent of the defendant?

Mr. Gross: Yes.

The Court: I overrule the objection.

Q. What did Mr. Levitan say to you at the time?

A. We told him we wanted business property, and said the lots were not business; and he said if they were not business he would refund the money. He asked my address and I didn't hear from him.

CROSS EXAMINATION BY MR. GROSS:

Q. Mr. Lerner was your New York lawyer?

A. Yes, sir.

Q. After you found out in February, 1929, the early part of February, you found out it couldn't be used for business?

A. Yes, sir.

Q. You bought the property in August, 1927?

A. Yes, sir.

Q. And you executed a mortgage in the summer of \$3750?

A. No, sir; \$3500, because I paid in advance half of the amount in one check.

Q. You notice in the deed that there is a mortgage you were executing for \$3750?

A. Yes, sir.

Q. Your deed contains a clause that it is subject to a mortgage of \$3750.

A. My deed contains a mortgage of \$2500.

10

20

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*Margaritis Christon, Cross*

Q. Can you read English?

A. Yes, sir.

Q. Is that correct (indicating on paper)?

A. That is correct, but we made special arrangements.

10 Q. In February, 1929, you found out that this property was zoned against use for business?

A. Yes, sir.

Q. When in February, 1929, do you remember?

A. At the beginning.

Q. The early part of the month?

A. Yes, sir.

Q. After you found that out you turned the matter over to your New York attorney?

20 A. Yes, sir.

Q. And did you send a check on account of interest?

A. Yes, sir; on advice of Mr. Lerner.

Q. And you sent the check for the interest on this mortgage, didn't you?

A. Yes, sir; on his advice.

Q. I am asking you; did you send a check to the North Jersey Company for interest on this mortgage?

30 The Court: Did you or didn't you?

The Witness: I did.

Q. Did you also pay \$100 on account of the principal of the mortgage at the same time?

A. I paid whatever—

Q. You paid \$100 on account of the principal?

A. Not only—

BY THE COURT:

40 Q. Do you recall whether you paid \$100 at the same time on account of the principal?

A. I made only one payment.



*Margaritis Christon, Cross*

Q. Do you recall how much that was?

A. Not exactly.

BY MR. GROSS:

Q. You had this talk with Mr. Kyprie about the use you could put this property to before you made the contract?

10

A. Yes, sir.

Q. You are a business man, aren't you?

A. I am.

Q. And you read this contract before you signed it, didn't you?

A. Yes.

Q. And you read it carefully before you signed it, didn't you?

A. I guess I did.

Q. And you were at the company's office at 580 Fifth Avenue, when you signed it?

20

A. I was.

Q. And Mr. Levy was there?

A. The gentleman right there (indicating).

Q. You didn't talk to him about what use you were going to make of the property?

A. I asked him if it was business and he said he verified Mr. Kyprie's statement.

Q. After that the contract was prepared?

30

A. The contract was prepared.

Q. Did you see the clause in there marked "A" before you signed it?

A. Witness looks at paper.)

BY THE COURT:

Q. Did you see the clause before you signed the contract?

A. I saw it, but they told me it was the usual one.

40

Q. I want you to answer questions.



*Margaritis Christon, Cross*

A. I don't remember.

BY MR. GROSS:

Q. But you testified before that you read the contract carefully before you signed it; is that correct?

10

A. Yes, I did.

Q. Did you make any inquiry about that clause "A" in the contract before you signed the contract?

A. Yes, sir; they told me it was the usual one.

Q. Who told you?

A. Mr. Kyprie.

Q. What did they tell you?

A. He told me.

20

Q. Who is he?

A. Mr. Kyprie, a salesman, the agent.

Q. What?

A. That that is the usual form that they put in every contract.

BY THE COURT:

Q. Are you telling the truth? Do you remember where this took place?

A. In my office.

30

Q. Before you went over to Fifth Avenue?

A. Yes, sir.

Q. And you had it before you in your office before you went over?

A. This contract, yes sir; no, sir.

Q. What did you say?

A. In the office of — when I went to sign —

40

Q. How were you able to take it to the office? You are not telling the truth here. You are getting in trouble here, because you are trying to use your brain in telling us what will fit the case. Stick to the facts. All you have to do is to tell the plain truth.



*Margaritis Christon, Recross*

A. I am telling the plain truth.

BY MR. VANDER BURGH:

A. The trouble is,—if you don't remember say so.

A. I don't remember.

BY MR. GROSS:

Q. Do you remember where you first read that clause in the contract?

10

A. I am not sure whether I read it in my office or in the corporation's office.

Q. But you did read it before you signed the contract?

A. I did.

Q. And you are a business man?

A. I am.

Q. And have been for how many years?

20

A. In business?

Q. Yes.

A. Six or seven years.

Q. And you know when you sign a contract after you read it, you are bound by what the contract says?

Mr. Vander Burgh: I object.

The Court: Objection sustained.

Q. You made no effort to find out the zoning ordinance of Teaneck from the time you bought this property in August, 1927 until February, 1929.

30

A. No sir; because —

Q. You made no effort?

A. No, sir.

REDIRECT EXAMINATION BY MR. VANDER BURGH:

Q. I show you a deed from the North Jersey Holding Company, dated April 10, 1928, showing purchase price of \$5,000; paid to date \$1250, and on another \$750; and received on account \$250; balance due \$2500?

40



*Margaritis Christon, Recross*

A. Yes, sir.

Q. Interest from November 1, 1927 to May 1, 1928.

RE CROSS EXAMINATION BY MR. GROSS:

Q. You knew Mr. Kyprie very well?

10

A. I did.

Q. For how many years?

A. Quite a few years.

Q. You knew him from the old country?

A. Yes, sir.

Q. A friend of his in the old country?

A. Went to school with him.

Q. Went to school with him in Europe?

A. Yes, sir.

20

Q. Didn't bring him to court with you this morning, did you?

A. Yes, sir.

Q. He is in court?

A. Yes, sir.

Q. Is he here?

A. Yes, sir.

PETER CALATHES, being duly sworn on the part of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. VANDER BURGH:

30

Q. Did you purchase a lot from the North Jersey Holding Company?

A. Yes, sir.

Q. I show you an agreement dated June 6, 1927?

A. That is right.

Q. Purchased that from the North Jersey Holding Company?

A. Yes, sir.

Q. Is that your signature (indicating)?

40

A. Yes, sir.

Q. You purchased lot No. 5?



*Peter Calathes, Direct*

A. Yes, sir.

Q. Who sold this lot to you?

A. Mr. Kyprie sold that lot to me.

Q. When did you first meet Mr. Kyprie?

A. About two or three weeks before I bought that lot; I met him with another friend and they were talking about the lots and he said, "I have a very nice property for you for \$5,000, and the only place for business." We talked with him and then deposited \$100. That's all I know about Mr. Kyprie.

10

Q. Did you know Mr. Kyprie before?

A. No; it was the first time I met him, in my friend's home.

Q. Does your lot back up to the railroad?

20

A. Yes, sir.

Q. What was the size of your lot?

A. 50 by 100 feet.

Q. Did he say anything about the other property?

A. He said the opposite property from us could be bought for \$800 for 100 feet, and ours was \$5000.

Q. How much have you paid?

A. I have paid over \$1000. I paid up to last month, until I found I couldn't pay until the case goes to court.

30

Q. When did you find out the property wasn't business?

A. Mr. Kyprie asked a good friend of mine to buy and discovered it was not business and we went to Mr. Lerner, who is a lawyer.

Q. When was that?

A. About the 1st of February.

BY THE COURT:

40

Q. Two years ago?



*Peter Calathes, Cross*

A. Two years ago.

BY MR. VANDER BURGH:

Q. Can you from your papers refresh your recollection as to the amount of money you have paid?

10

A. I can't tell you exactly, but I have everything; I paid every month; the last check in February they returned to me; I have my checks together.

Q. Is your wife in court?

A. Yes, sir.

Q. Was she with you when you bought the lots from Mr. Kyprie?

A. Yes, sir; my wife, and another fellow who was with me.

20

Q. Is he in court?

A. Yes, sir.

Mr. Vander Burgh: (Reading) It is admitting that there has been paid on account of principal, \$2395.68 on account of principal. \$296.28, subject to confirmation; taxes paid \$32.76.

CROSS EXAMINATION BY MR. GROSS:

30

Q. You retained Mr. Lerner, a New York attorney?

A. Yes, sir.

Q. And you found out that you couldn't build business property as Mr. Kyprie had represented to you I should say in February, 1929?

A. That was the first part of February.

Q. The early part of February, 1929?

A. The first part.

Q. The first part?

40

A. Yes, sir.

Q. After that date in February you sent this



*Peter Calathes, Redirect*

company a check for \$104 principal and \$112 interest?

A. Yes, sir.

Q. And in March \$112 interest and \$104 principal?

A. Yes, sir.

Q. And in April, 1929, you sent this company \$111.96?

A. Yes, sir.

Q. And \$115.14, principal?

A. Yes, sir.

Q. In May you sent \$111.05 and \$104 interest?

A. Yes, sir.

Q. And when you made all those payments you knew the property couldn't be used for business?

A. Yes, sir.

Q. You knew it?

A. I knew it.

REDIRECT EXAMINATION BY MR. VANDER BURGH:

Q. But why?

A. I didn't know, as I had to pay him, the case was going on.

Q. Do you know whether or not your attorney had written an officer in the Holding Company, stating that these payments were made under protest?

A. No, sir.

RECROSS EXAMINATION BY MR. GROSS:

Q. You didn't start suit until 1930, until June, 1930?

A. I believe before that.

The Court: The original bill was filed February 21, 1930.

Q. You didn't start this suit until a year after?

A. It was up to Mr. Lerner to take care of that.

10

20

30

40



*Peter Calathes, Recross*

Q. But you made cash payments after you spoke to Mr. Lerner?

A. Yes, sir; I didn't know the laws of New Jersey.

Q. You didn't know the laws of New Jersey?

10

A. Yes.

Q. All the time you owned this property you didn't make any inquiries about stores?

A. I wanted to put them up. The fellow said was the only place for business. I didn't have any occasion to build then.

Q. Did you have any intention to build in 1929?

A. No; but my friend found out it was for business.

20

Q. What friend?

A. Mr. Christon and Pinios and they found it was not a business place, and they got together and notified me too.

Q. You made the contract June 6, 1927?

A. Yes, sir; I don't remember the exact day; the papers show.

Q. For approximately a year and eight months you didn't make inquiries at all?

30

A. Yes, sir.

Q. Do you read English?

A. Yes, sir.

Q. Did you read this contract before you signed it?

A. I got it.

Q. You read it?

A. I did.

Q. Did you read this clause "A"?

40

A. Yes, and I asked Mr. Kyprie what it was and he said I didn't have to worry.



*Peter Calathes, Recross*

Q. Who did you ask?

A. Mr. Kyprie.

Q. Where did you sign that contract?

A. In the office.

Q. Which office?

A. Mr. Kyprie brought that to my store.

10

Q. You signed at the store?

A. Yes, sir.

Q. You read it through carefully before you signed it?

A. Yes, sir.

Q. Read it through carefully before you signed it?

A. Yes, sir. And he said: "Don't worry." He was very reliable.

20

Q. The contract was not signed by any of the officers of the company in your store?

A. Mr. Kyprie signed it.

Q. The contract was not signed by any officer of the company when you signed it?

A. No; they left the contract with me.

Q. Left a copy with you?

A. Yes, sir.

Q. And you relied on what Mr. Kyprie told you?

A. Yes, sir.

30

Q. Are you a business man too?

A. Yes, sir.

Q. How long?

A. Eight or ten years.

BY THE COURT:

Q. What is your business?

A. Groceries.

BY MR. GROSS:

Q. Wholesale grocer or retail?

40

A. Retail grocer.



*Nicolletta Calathes, Direct*

Q. Sign contracts in your business?

A. Yes, sir.

Q. You read them through before you sign them?

A. Yes, sir.

10 Q. Don't rely on what the salesman tells you?

A. Yes, sir. If I don't know the salesman, I can't rely on the salesman, but I trusted this Mr. Kyprie, and that is where the whole trouble comes.

REDIRECT EXAMINATION BY MR. VANDER BURGH:

Q. Did you have another contract for the sale of the lot?

A. No, sir.

Mr. Vander Burgh: I now offer the contract.

20

(Contract admitted in evidence and marked Exhibit C-10).

Mr. Vander Burgh: I offer the deed in evidence.

(Deed admitted in evidence and marked Exhibit C-11).

NICOLETTA CALATHES, being duly sworn on behalf of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. VANDER BURGH:

30

Q. Did you accompany your husband to Tea-neck?

A. I did.

Q. Tell us the best you can what Mr. Kyprie told your husband in connection with the lots?

Mr. Gross: I object.

The Court: Objection overruled.

40

A. As far as I remember he called at my house and we went to West Englewood and met Mr. Kyprie and he showed the lots and told that they were the only place for business. Opposite of



*Nicoletta Calathes, Cross*

our lots it wasn't for business and they were cheaper than what we bought.

Q. Did you go more than once with your husband?

A. Me and my husband and a friend of ours.

Q. More than once or just once?

A. Just once.

10

CROSS EXAMINATION BY MR. GROSS:

Q. You said Mr. Kyprie said the other lots were cheaper?

A. Opposite us.

Q. They were cheaper?

A. Yes, sir.

Q. That is what he told your husband?

A. Yes, sir; that is all. I didn't pay much attention to it.

20

Q. Mr. Kyprie showed you and your husband both sides of the street?

A. Yes, sir.

Q. And he told you the lots on the other side were cheaper?

A. Cheaper because it wasn't for business places, that is why they were cheaper.

Q. And told you the lots on the other side were cheaper?

30

A. Yes, but what my husband bought was for business.

Q. Who told you that?

A. Mr. Kyprie told my husband.

Q. Did your husband want to buy business property, was he in the market for business property?

A. When we go to Englewood what he bought was for business lot and opposite to us is the cheaper lots; that is because they are not for business.

40



*George M. Kyprie, Direct*

Q. Were you at your husband's place of business when Kyprie came the first time?

A. No; my husband was home.

Q. And you went out with Mr. Kyprie and your husband to see them?

10 A. Yes, sir.

Q. Your husband went to buy lots and felt that he could make more money on them?

A. Yes, sir.

Q. Not for business?

A. I don't know; I don't know what he was going to do afterwards.

Q. Didn't want to open a store there?

A. No; I don't know that.

20 GEORGE M. KYPRIE, being duly sworn on behalf of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. VANDER BURGH:

Q. You have never seen me before, have you?

A. No.

Q. Or Mr. Marcus?

A. No.

Q. Or Mr. Lerner?

A. No, sir.

30 Q. You were working for the North Jersey Holding Company from 1927 to 1928?

A. I worked for the Hudson & West Shore Realty Company and that company was selling for the North Jersey Holding Company.

Q. And you sold the property to the complainants here, Mr. Kazepis and Christon and Calathes?

A. Yes, sir.

Q. At that time you believed the lots would be business lots?

40 A. Yes, sir.

Mr. Gross: I object. It is leading.

The Court: I will permit it.



*George M. Kyprie, Direct*

Q. What if anything, did you tell people who purchased, about these lots, as to whether they were business or residential lots?

Mr. Gross: I object upon the ground that there is no proof now that this man had authority.

10

The Court: I overrule the objection.

A. I took my different prospects, all that are here, and took them over to the property. I gave them a general survey of the business situation in West Englewood, naturally. I sold the lots as business, and some of them inquired whether they could put stores and some were buying for investment possibilities and that was the basis on which I sold these lots, but I didn't say this was the only business property in West Englewood, because there is another business property diagonally across the tracks near the station, where property is selling around \$500 and \$600 per front foot, and I felt that this property would make a better and safer investment for anyone who wanted to buy lots.

20

Q. How had you obtained the knowledge that you had that these lots were business lots?

A. I was told in the office.

30

Q. Who told you?

A. Mr. Levy.

Q. Was he an officer?

A. He was an officer.

Q. Do you know what office?

A. I beg your pardon.

(Witness indicating gentleman in court room).  
I do not think you are connected with the North Jersey Holding Company.

40

The Court: It is admitted that he is vice president.



*George M. Kyprie, Cross*

CROSS EXAMINATION BY MR. GROSS:

Q. These conversations which you had were in 1927?

A. Yes, sir.

Q. During the year 1927?

10

A. Yes, sir.

Q. You suggested to your people that this property was satisfactory for business because diagonally opposite was land which sold for \$500 a front foot?

A. Yes, sir.

Q. In other words you were giving these people what you thought was in your best judgment speculative property?

20

A. Yes, sir.

Q. It was your notion?

A. Yes, sir.

Q. You were employed by the Hudson & West Shore Company?

A. Yes, sir.

Q. And that company had an entirely different set of offices and was entirely apart from the North Jersey Holding Company?

A. Yes, sir.

30

Q. In making these sales of the North Jersey property you were not told by any officer of that company what property you represented to prospective buyers that this was business property?

A. It was stated in the office. We had residential lots and we didn't have any business lots and I think it was the following year that this tract was opened for business. That was my understanding; one side of the street would be business and so I sold one side of the tract for business property, as stated by Mr. Levy.

40



*George M. Kyprie, Cross*

BY THE COURT:

Q. I didn't quite understand who you said you were employed by?

A. Hudson West Shore Realty Company.

Q. How did you come into this sale of lots?

A. The Hudson West Shore Company was selling the property for the North Jersey Holding Company from their office.

10

Q. An entirely distinct company with an entirely distinct office?

A. Yes, sir.

Q. Do you work on a commission basis?

A. Yes, sir.

Q. Did you get any commission for the other piece?

A. Yes, sir; as far as I know my commission came from the Hudson West Shore.

20

Q. No officer of the North Jersey Holding Company told you to represent these to prospective purchasers as lots that could be used for business?

A. Yes, sir. The only statement I had was through Mr. Levy, that they were business, when I first started selling.

Q. That was early in 1927?

30

A. I suppose; early spring.

Q. Mr. Levy — what did he say — there were no restrictions in the deed?

A. He said there were no restrictions for business and I asked him if they were included in the deed and contract, and he said yes, and the contract specifically states it is business property, right in the contract, it mentions the special clause where they object to certain trades and manufactures.

40



*George M. Kyprie, Redirect*

Q. I understand nothing was said by Mr. Levy about the zoning law?

A. No.

Q. Did you say anything about it in talking with these prospects?

A. No.

10

Q. Did you ever talk about it?

A. No.

BY MR. GROSS:

Q. Did you ever tell Christon or Calathes that this clause marked "A" related to a zoning ordinance?

A. Sure.

Q. Did you tell them it would have no effect?

A. On the business.

20

Q. That it would not be binding on these people, on these prospective purchasers?

A. I didn't get the question.

The Court: State it over again.

Q. It has been testified to by Mr. Aghnides and I believe by Mr. Christon, both, that they read the contract and they saw that clause?

A. Yes, sir.

30

Q. And they asked about it and that you said it had no effect?

A. How could I say that; there are certain city regulations that must be complied with.

Q. That is the form of the contract that you used in all the sales of the North Jersey Holding Company?

A. I guess that is all.

REDIRECT EXAMINATION BY MR. VANDER BURGH:

40

Q. You actually told them that they could use it for stores and business?

A. Yes, sir; it was specified here.



*George M. Kyprie, Direct*

Q. And it was specified in the contract?

A. Yes, sir.

Q. Was this written contract for the so-called business property different from the residential property?

A. Yes, sir.

Q. You didn't specify in the residential property that business could be had?

A. Restricted to one-family houses.

Q. When you secured a purchaser for a lot you made up the contract, didn't you?

A. I didn't make up the contract.

Q. Whom did you report to?

A. I reported the purchase and the stenographer made it up.

Q. Did you turn the deposit over to Mr. Levy?

A. Yes, sir.

Q. Who was vice president of the North Jersey Holding Company?

A. Yes, sir.

Q. Subsequently you received a commission.

A. Yes, sir.

ED. PETRIDES, being duly sworn on behalf of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. VANDER BURGH:

Q. You know the complainant Calathes?

A. Yes, sir.

Q. Did you go with he and his wife to Teaneck?

A. Yes, sir.

Q. Do you remember what was said about the lots by Mr. Kyprie?

A. Mr. Kyprie, we met Mr. and Mrs. Calathes and met Mr. Kyprie on the property and Mr. Kyprie said the property is for business only, and Mr. Calathes said: "What is the price?" And he



*Christophore Caplane, Direct*

said "\$5000." And he went in and made a deposit.

Q. Did he say anything about the other property?

10 A. He told us it was seven or eight hundred dollars cheaper.

CROSS EXAMINATION BY MR. GROSS:

Q. That is all he said?

A. Yes, sir.

Q. There is a difference in the price of the two properties?

A. Yes, sir. And he said that the corner property was sold for \$22,000; he mentioned it to Mr. Calathes, and that they were going to build and do business there in a short time.

20 Q. You don't know whether business property has been built there?

A. No, sir.

REDIRECT EXAMINATION BY MR. VANDER BURGH:

Q. This property backs up to the railroad?

A. Yes, sir.

CHRISTOPHORE CAPLANE, being duly sworn in behalf of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. VANDER BURGH:

30 Q. You are one of the complainants?

A. Yes, sir.

Q. You also purchased a lot through Mr. Kyprie?

A. Yes, sir.

Q. I show you a contract dated June 6, 1927, between Christophore Caplane and the North Jersey Holding Company and ask if that is your signature?

40 A. Yes, sir.

Q. That is the contract for the purchase of the lot?



*Christophore Caplane, Direct*

A. Yes, sir.

Mr. Vander Burgh: I offer that in evidence.

(Contract admitted in evidence and marked Exhibit C-12.)

Q. I show you a deed dated June 14, 1927, between North Jersey Holding Company and you?

10

A. Yes, sir.

Q. That is the deed for the lot covered by the contract?

A. Yes, sir.

Mr. Vander Burgh: I offer the deed in evidence.

(Deed admitted in evidence and marked Exhibit C-13.)

Q. I also show you a contract dated April 11, 1928, between the North Jersey Company and Christophore Caplane, Parry Jordan; is that your signature?

20

A. Yes, sir.

Mr. Vander Burgh: I offer that in evidence.

(Contract admitted in evidence and marked Exhibit C-14.)

Q. I also show you a deed dated May 1st, 1928, between North Jersey Holding Company and Christophore Caplane and Parry Jordan. Is that the deed for the lot?

30

A. Yes, sir.

Mr. Vander Burgh: I offer that in evidence.

(Deed is admitted in evidence and marked Exhibit C-15.)

Q. How much has been paid on lot 33?

40

A. The second one?



*Christophore Caplane, Direct*

Q. Yes. Is this the statement of the amount?

A. (Indicating) I will have to check it.

Q. How did you come to buy these lots?

10 A. One day Mr. Kyprie came into the store and said that Mr. Agnides sent him over and I knew Mr. Agnides very well and he said, "I have some very good lots in Jersey," and he then asked if I was interested. I didn't know Kyprie at all, and as long as he said Mr. Agnides sent him over I said we were too busy now, some other time. A couple of days later he came to my house and it seemed a good proposition and we made an appointment to go and see the lots and I don't know exactly, it was some Sunday. He took us up in his car with my wife to New Jersey to see the  
20 lots; and so he sold the lot; he told me, I believe, that I purchased the fourth lot from the corner. He said that is the key lot in the tract and he said: "You can build five or six stores and rent them for so much and it will be a very nice proposition. And he took us around the property opposite which was much less; and I asked him how much the residential lots were and he said probably eight hundred or nine hundred dollars for residential lots. But I wanted to buy the business  
30 lots and he said: "You would be making money. Finally we decided to buy this lot. I believe we came back to the house and I gave him a deposit on this lot.

Q. When did you first find out they weren't business lots?

A. I was told by Mr. Agnides that they found out it wasn't business.

40 Q. When was that?

A. As soon as they told me that I went down



*George M. Kyprie, Recalled*

to find out right away and I wrote to the city hall, to the town. They wrote me back there was no business allowed, only residences; and as soon as I got that letter I saw my lawyer.

Mr. Vander Burgh: It is admitted that payments on lot 33 total \$1,097.24 and payments on lot No. 6 total \$3,629.94.

10

GEORGE M. KYPRIE, recalled on behalf of complainants, testifies as follows:

BY THE COURT: I notice a clause in one of these contracts reads: "This conveyance is made subject to any and all restrictions governing or controlling the use of said lands controlled by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force." Was that clause that I have just read mentioned in conversation between you and any of the defendants or Mr. Levy, in your presence?

20

A. No; I always closed the deals myself.

Q. Was any mention made of that clause in that contract?

A. I had in the presence of Mr. Aghnides read the contract, including I think Mr. Christon; I can't recollect. The first deal we closed we had a discussion about the clause.

30

Q. What was said:

A. I said: "We can't stop the city from putting in ordinances which you will have to conform to."

Q. Also: "Said lands may, however, be used for stores, dwellings, or both, for the conduct therein of retail or wholesale business, not in violation of the aforesaid provisions."

A. That is the basis on which I sold the property as business.

40



*George M. Kyprie, Recalled*

Q. As I understand it, you spoke of the zoning ordinance and said of course you couldn't do anything?

A. Yes, they have power to put in rules and regulations.

10 Q. Didn't anybody express an inquiry as to what the city had done with that power?

A. Not that I remember.

Q. No discussion that the stores were prohibited there?

A. Not at the time. After Mr. Aghnides and Mr. Christon had said that the property was not for business I tried to get information, but I couldn't get any real, authoritative information.

20 Q. I understand that you nor anybody else, in the conversations that led up to the sale of the lots to the complainants, ever made any inquiry as to what the zoning ordinances were, or stated what they were?

A. I didn't make any special inquiry, personal investigation.

BY THE COURT:

30 Q. None of these, Mr. Christon or any of them said to you, "Does the zoning ordinance permit business?" Never asked anything of that sort?

A. No; nothing said.

(At this point recess is taken until 2 o'clock in the afternoon.)

BY MR. VANDER BURGH:

Q. Who gave you the information as to the price of these lots?

A. We had a definite price list from the company, Mr. Levy fixed it up.

40 Q. Who fixed the terms of the contract?

A. We didn't have a set rule or terms; there



*George M. Kyprie, Recalled*

were different terms, according to the different people, or what he could afford.

Q. You had that authority?

A. Not authority. If there was a special case I would take it up with Mr. Levy.

Q. Otherwise you took their form of contract?

A. Yes, sir.

10

BY MR. GROSS:

Q. You sold for the North Jersey the corner property right next to Mr. Calathes?

A. My friend Mr. Edis sold it.

Q. That was two lots?

A. Yes, sir.

Q. Those two lots adjoin Calathes?

A. Not Calathes, Kazepis.

Q. Yes. Those two lots were sold for \$17,000?

20

A. \$22,000.

Q. Those two lots which adjoin this property of Kazepis and Pinios is now being used for business property?

Mr. Vander Burgh: I object. It is immaterial. We are dealing whether or not this property was sold to the complainants for business in conformity with the zoning ordinance.

30

The Court: The zoning ordinance is in evidence.

Mr. Gross: I withdraw the question for the moment.

Q. This property is on Windsor Road?

A. Yes, sir.

Q. Right adjoining the other property you sold these various people?

A. Yes, sir.

40

Q. When was that property sold to Mr. Billings?



*George M. Kyprie, Cross*

A. That was the first sale made on Windsor Road.

Q. The first piece of property you sold?

A. Yes, sir.

Q. That was one of the properties that Mr. Levy said could be used for business properties?

10

A. Yes, sir.

Mr. Vander Burgh: I object to it as immaterial. We are concerned as to whether this property could be used for business.

The Court: I overrule the objection.

A. Yes, sir.

Q. It is now occupied by stores?

A. Not yet.

Q. In the course of construction?

20

A. Plans have been filed.

Q. You say this was the first one of the business properties sold?

A. In the office.

BY MR. VANDER BURGH:

Q. You didn't know as a matter of fact that this particular property is zoned again for business property?

30

A. No; I saw Mr. Billings and said: "What have you done with it?"

CROSS EXAMINATION BY MR. GROSS:

Q. Where is that property located?

A. On the side street.

Mr. Vander Burgh: I renew the objection to this testimony as to whether or not some other property, even those on a side street, is about to be used for business property.

The Court: I overrule the objection.

40

A. Corner of Windsor Road and West Englewood Avenue, west of the railroad track.



*George M. Kyprie, Recross*

BY MR. VANDER BURGH:

Q. Are you familiar with the zoning map (indicating). That is the West Shore Railroad?

A. Yes, sir.

Q. Is that the property in black about which you have just testified?

A. No, sir.

Q. This is the westerly side?

A. Yes.

Q. This (indicating) is the one I am talking about, is this particular one here — corner of — the southwest corner of West Englewood Avenue, southeast corner of Windsor Road.

Q. On the south side of the railroad track?

A. I beg your pardon, I want to locate —

The Court: Turn the map around.

Q. This is north (indicating).

A. This is north, this is west; is this the railroad track here? Windsor Road here?

A. This is the corner marked in black.

Mr. Vander Burgh: I want to call the Court's attention that that is business property.

RECCROSS EXAMINATION BY MR. GROSS:

Q. Examining that, the 1929 zoning map, will you locate the property on that map?

A. This is the corner I am talking about (indicating).

Mr. Gross: Will you admit it was zoned against business in 1929?

Mr. Vander Burgh: All of it.

Mr. Vander Burgh: Would you also consent that the property in 1921 was zoned against business?

Mr. Gross: Yes.

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*Christophore Caplane, Cross*

CHRISTOPHORE CAPLANE, recalled on behalf of complainants.

CROSS EXAMINATION BY MR. GROSS:

Q. Did you read the contracts before you signed them?

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A. No, sir.

Q. Can you read English?

A. No, sir; Mr. Kyprie read them for me.

Q. You are in business?

A. Yes, sir.

Q. What business?

A. Restaurant, lunch room.

Q. How long have you been in business?

A. Eight or nine years.

20

Q. In New York City?

A. Yes, sir.

Q. Did you have a discussion with Mr. Kyprie about the zoning ordinance in Teaneck?

A. No, sir.

Q. After you signed the contract you got a deed for your property?

A. Yes, sir.

Q. And you gave back a mortgage?

A. Yes, sir.

30

Q. You made payments on account of the mortgage?

A. On the mortgage.

Q. You made payments on account?

A. Yes, sir.

Q. Made payments all through 1928?

A. I don't know exactly when, but as soon as I found out there was no business lots.

Q. Who told you first?

40

A. Mr. Agnides.

Q. Is he the man who took you to Kyprie?



*George Kazepis, Direct*

A. Yes, sir; he introduced me to Kyprie.

Q. Was Mr. Lerner your lawyer too?

A. Yes, sir.

Q. Who took you to Lerner? Did Mr. Agnides tell you that he had taken Mr. Calathes and Mr. Christon to Mr. Lerner?

10

A. Yes, sir.

Q. Did you ever try to find out what the zoning ordinance provide? After you signed the contract?

A. No, sir.

Q. Made no effort to find out?

A. No, sir.

GEORGE KAZEPIS, Called on behalf of the complainants.

20

DIRECT EXAMINATION BY MR. VANDER BURGH:

Q. I show you a contract, Mr. Kazepis, marked C-5, between the North Jersey Holding Company and you and Mr. Pinios; is that the contract you signed for the purchase of the lot?

A. Yes, sir.

Q. Who sold the lot?

A. Mr. Kyprie. Mr. Agnides told me the lot was good and said there was a chance to make some money. The next day we went and saw the lots and the lots were so and so and he said the other lots were so and so, and he talked to my brother-in-law and he said, "We will take both lots," and Mr. Kyprie gave us special permit to give \$2250 on one lot and the other lot he gave so much down and continued payments after one year and after we couldn't pay them I called up Mr. Agnides and he said, "If you sell the one lot, you have a good chance to hold the other." And my brother-in-law said, Agnides said it is not

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40



*George Kazepis, Cross*

business and said make no more payments; and I said, "Mr. Aghnides, I am a poor man; see what you can do." And he said, "Leave it to me."

Q. Did Mr. Kyprie say what you could use the lots for?

10 A. Yes, sir; business lots. He had the business lots because it was the key location.

Q. How much did you pay the North Jersey Holding Company?

A. \$3534.50.

Q. When did you find out that the lots were not business lots?

A. Mr. Aghnides found it.

Q. When did he tell you they weren't business?

20 A. I don't remember the date. Mr. Aghnides said, "Don't make any more payments." I said: "You put me in the mess; get me out."

Q. Was it the first part of 1929?

A. That is right.

BY THE COURT:

Q. How long before did you make your last payment?

30 A. One month I was behind and I called up Mr. Aghnides and said, "What can you do?" And he said: "Pay all you can and they will give you time."

Q. What time was that with relation to the time you found out about these not being business lots?

A. I think it was a month before or something like that.

CROSS EXAMINATION BY MR. GROSS:

Q. Was it five months before you made the last payment?

40 A. My brother-in-law was to get those things and I told him to get those things.



*George Kazepis, Cross*

Q. You don't know when you made the last payment?

A. Really I don't; my brother-in-law took care of it.

Q. On one lot you made the last payment on February 6, 1928?

A. I don't know; my brother-in-law does.

10

Q. Is your brother-in-law in court?

A. Yes, sir.

Q. On the other lot you only made one payment, \$1250?

A. Yes, sir.

Q. In October, 1927?

A. Yes, sir. They said after one year they would give us an extension so that we could pay for the next one.

20

Q. As a matter of fact, you don't know when you made that payment?

A. I don't.

Q. Are you in business?

A. A little bit, yes.

Q. You are a business man?

A. A small business man.

Q. Do you read English?

A. A little bit.

30

Q. Did you read the contract before you signed it?

A. No; I was blind to Mr. Aghnides and Mr. Kyprie and I thought they were working honest.

Q. You didn't go to Teaneck?

A. No.

Q. You didn't go to Teaneck in 1927 to find out if you could put up any store property there?

A. No, I haven't.

40



*Nick G. Pinios, Direct*

Q. The first you knew was when Aghnides told you about it?

A. Yes, sir.

BY MR. VANDER BURGH:

10 Q. I show you a letter dated January 31, 1929, from the North Jersey Holding Company and ask if you or your brother-in-law received it?

A. Yes, sir.

Mr. Vander Burgh: I offer the letter in evidence.

(Letter admitted in evidence and marked Exhibit C-16.)

NICK G. PINIOS, being duly sworn on behalf of the complainants, testifies as follows:

20 DIRECT EXAMINATION BY MR. VANDER BURGH:

Q. Are you a brother-in-law of Mr. Kazepis?

A. Yes, sir.

Q. You and he both bought this lot?

A. Yes, sir.

Q. Did you have any talk with Mr. Kyprie?

A. Just the one day he sold us the lots.

Q. Did you go and look at the lots?

A. Yes, sir.

Q. With whom?

30 A. With Mr. Aghnides, Mr. Kyprie and my brother.

Q. Did Mr. Kyprie say what kind of lots they were?

A. He said they were the only business lots, and it was night time, about eight o'clock.

CROSS EXAMINATION BY MR. GROSS:

Q. This was in 1927, wasn't it?

A. Yes, sir.

40 Q. The early part of 1927 when you first saw them?



*Nick G. Pinios, Cross*

A. Around October, something like that.

Q. You bought one of these properties from Joseph?

A. I don't know Mr. Joseph. I know Mr. Agnides and Mr. Kyprie.

Q. Did you buy one of the properties from Joseph? 10

A. I knew Agnides and Kyprie.

Q. One property you bought lot 263, you bought from Kyprie?

A. Yes, sir.

Q. Did you not take over the contract Joseph had?

A. I don't know Mr. Joseph; never saw the man.

Q. You don't remember taking an assignment of the contract to Joseph? 20

A. No; never saw Joseph.

Q. Never saw him in your life?

A. Yes, sir. I got it from Mr. Kyprie.

Q. Didn't you get the deed from Joseph?

A. Mr. Agnides I think got everything because he handled this.

Q. Did you handle the business end of this for your brother-in-law? 30

A. Yes, sir.

Q. Bought two lots?

A. Bought two lots.

Q. One lot you got a contract from the North Jersey Holding Company and the other deed you got a deed from Joseph?

A. We didn't get the deed.

Q. Didn't get the deed from Joseph?

A. Maybe Mr. Agnides did. 40

Q. Do you remember getting a contract from Joseph for lot No. 3 in block 363 C?



*Parry Jordan, Direct*

A. For lot number —

The Court: If you don't remember, say you don't.

The Witness: I don't remember getting a deed.

10 Q. Did Joseph sell you a lot by deed?

A. We got everything from Mr. Kyprie. I never saw Mr. Joseph.

Q. Never remember getting a deed from Joseph?

A. No, sir.

PARRY JORDAN, being duly sworn on behalf of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. VANDER BURGH:

20 Q. Did you ask Christophore Caplane to buy lot 33?

A. Yes, sir.

Q. From the North Jersey Holding Company?

A. Yes, sir.

Q. Did you have any trouble before buying the lot with Mr. Kyprie?

30 A. Mr. Kyprie came over and started talking how good the property was and how many stores could be put there, and I agreed to buy the lot if my uncle came in, and my uncle bought the property between us.

Q. Did you attend to the purchase with Mr. Kyprie?

A. No, sir.

Q. Do you know how much was paid on it?

A. No.

CROSS EXAMINATION BY MR. GROSS:

40 Q. You are a business man?

A. Yes, sir.

Q. And have been for how many years?



*Julius Lerner, Direct*

A. Five or six.

Q. You signed the contract?

A. Yes, sir.

Q. Did you read it?

A. I left everything to my uncle to take care of it.

Q. Do you know whether your uncle read it?

10

A. I don't know.

Q. This talk you had with Mr. Kyprie, when did that take place.

Q. Do you know whether your uncle read it?

A. I don't know.

Q. This talk you had with Mr. Kyprie, when did that take place?

A. When it was?

Q. Yes.

20

A. I don't recall the time.

By THE COURT:

Q. Did you have a talk with Kyprie?

A. Yes, sir.

By MR. GROSS:

Q. Did you make several payments on account of the mortgage?

A. I really think we did.

Q. Did you ever go to Teaneck?

30

A. No, sir.

Q. Did you ever go out to see what the property could be used for?

A. No.

JULIUS LERNER, being duly sworn on behalf of complainants, testifies as follows:

DIRECT EXAMINATION By MR. VANDER BURGH:

Q. Where do you live?

A. 175 151st Street, New York City.

40



*Julius Lerner, Direct*

Q. You are an attorney-at-law of the State of New York?

A. I am.

Q. Do you know the complainants in this case?

A. I do.

10 Q. Did you represent them in New York?

A. I did.

Mr. Vander Burgh: I call on defendant's counsel to produce a letter of February 25, 1929, written by Mr. Lerner to the North Jersey Holding Company, and one on March 8th and one April 17th.

Mr. Gross: That is the only one (indicating to letter.)

20 Q. When did you first become acquainted with the facts in this case?

A. When the complainants came to my office in the early part of February, 1929.

Q. I show you a letter dated February 25, 1929, signed by you and addressed to the North Jersey Holding Company and ask you if you wrote that letter?

A. I did.

30 Q. How long after these people came to you did you write that letter?

A. I should judge about ten days to two weeks, I made a personal investigation before writing that letter, in New Jersey.

Mr. Vander Burgh: I offer that letter in evidence.

(Letter admitted in evidence and marked Exhibit C-17.)

40 Q. I show you copies of letters March 8, and March 10 and April 17, 1929, both addressed to the North Jersey Holding Company, and ask if



*Julius Lerner, Direct*

you sent the originals of those copies to that company on those dates?

A. Yes, sir.

Mr. Vander Burgh: I offer those letters in evidence.

(Letters admitted in evidence and marked Exhibit C-18 and Exhibit C-19 respectively).

10

Q. Referring to these letters just marked in evidence, did you make all the payments on account of these contracts after the complainants came to your office and retained you?

A. Whatever payments were made after that, after February, 1929, were made by these complainants through me.

20

Q. In each instance did you state that they were made without prejudice?

Mr. Gross: I object. The letters accompanying the payments are not in evidence.

The Court: I gather there were more payments than three.

A. In each instance they were made without prejudicing the rights of these complainants.

Mr. Gross: I withdraw my objection.

30

Q. When did you first bring this matter to my office?

A. I have no independent recollection now. If I may be permitted to state what happened in the interim?

The Court: No.

Q. Did you have any conversation with the officials of the defendant company?

A. No, but I did contemplate starting the action in New York State.

40



*Julius Lerner, Cross*

Mr. Gross: I object.

The Court: I sustain the objection.

Q. Do you know whether shortly after February, 1929, the New York office of the defendant company was closed?

10

Mr. Gross: I object.

The Court: On what ground?

Mr. Gross: It is immaterial.

The Court: You allege laches; that may be an important point. I overrule the objection.

20

A. Yes; the company had removed from 580 Fifth Avenue to some other place on Fifth Avenue. I found they had moved. I formed a draft against the North Jersey Holding Company and I took the matter up with you, Mr. Vander Burgh.

Q. I ask you again if you recollect when you put this matter in my hands, and show you a letter dated June 8, 1929, and ask if that refreshes your memory?

A. Yes, sir; I must be—three weeks before June 8th—the end of—in May, 1929.

Q. And that was after you discovered they had no office in New York?

30

A. Yes, sir.

CROSS EXAMINATION BY MR. GROSS:

Q. Did you visit the office at 580 Fifth Avenue, New York?

A. No, sir.

Q. How do you know then?

A. Mr. Agnides so advised me.

Q. That is the source of your information?

A. Yes, sir.

40

Mr. Gross: I move to strike that out.

The Court: Did you have personal knowledge?



*Julius Lerner, Cross*

The Witness: The date of the bank on the back of the checks that had been sent for payment with interest.

Q. What do you mean?

A. There is an endorsement on the back of the check and I believe the bank these checks went through was some New York bank and it was a New Jersey check.

10

The Court: Strike out his testimony that the place of business was changed.

Q. Did you represent these people?

A. Before that time?

Q. Yes, sir.

A. No.

Q. Who brought them in?

A. Another client of mine.

20

Q. Did they come in at one time?

A. No; Mr. Agnides and Mr. Christon came in themselves.

Q. And then Mr. Agnides brought them in one by one?

A. Not one by one, in groups.

Q. Do you recall receiving a letter in reference to your letter of the 25th of February in regard to the North Jersey Holding Company?

30

A. Yes, sir.

Q. Did you receive this letter from Gross & Gross?

A. Yes, sir.

(Mr. Vander Burgh produces letter.)

Mr. Gross: I offer the letter for identification.

(Letter marked D-1 for identification).

LE ROY VANDER BURGH, being duly sworn on behalf of the complainants, testifies as follows:

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*Le Roy Vander Burgh, Direct*

The Court: What do you offer to testify to?

Mr. Vander Burgh: To testify to the neglect in this matter; that it was within my office. I want to show it is mine, not my clients'.

10

DIRECT EXAMINATION BY MR. MARCUS:

Q. You are a member of the Bar of the State of New Jersey?

A. I am.

Q. Counsellor-at-law?

A. Yes, sir.

Q. Master in Chancery?

A. Yes, sir.

20

Q. And a member of the firm of Wright, Vander Burgh & McCarthy?

A. Yes, sir.

Q. Do you recall the month when you were consulted by Mr. Lerner?

A. Only from the date of the letter; that was June, 1929.

Q. Has this matter been in your charge since that time?

A. It has.

30

Q. That was May, 1929, before the communication?

A. Yes, sir. Mr. Lerner came first and consulted me as to the law in New Jersey in matters of this kind and he sent the people to me shortly thereafter.

Q. Did you have several communications with Mr. Lerner?

A. Yes, sir.

40

Q. Did you eventually commence suit?

A. I did.



*Le Roy Vander Burgh, Cross*

Q. How long after Mr. Lerner consulted you?

A. Almost a year; I don't know the date.

Q. February of 1930?

A. Yes, sir. In the meantime I had gone on an extended trip to Europe, if I recollect.

Q. You went to Europe?

10

A. Yes, sir.

Q. Was that one of the reasons the matter was delayed?

A. I think I was in Europe before it started. In any event the neglect was mine and I had a great many letters from Mr. Lerner to start the matter.

CROSS EXAMINATION BY MR. GROSS:

Q. You have several able assistants and solicitors in your organization?

20

A. Mr. Marcus is an able assistant, but he also is a very busy man.

Q. Judge McCarthy?

A. Judge McCarthy's official duties take up a good deal of his time.

Q. Mr. Wright?

A. No. Mr. Wright is general solicitor of the Public Service Corporation; he is a consultant.

Q. You have a number of admitted men?

A. One man just admitted, doing just the court work.

30

Q. You knew by this delay that considerable harm might come to your clients?

A. I didn't so consider. It was simply one of those matters that you couldn't start like a foreclosure suit, and I was so busy with other matters I put it aside.

Q. Did you consider if you succeeded in the suit a lot depends on the market?

40

A. I didn't consider it. When these people dis-



*David Levy, Direct*

covered the misrepresentations, the market was pretty dead in Bergen County.

Q. It hasn't been any better?

A. I think it is picking up.

10 Q. As a matter of fact this company sold all its property?

A. I only know it because you told me today.

Mr. Marcus: Complainants rest.

COMPLAINANTS REST.

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### Defendant's Case

20 DAVID LEVY, being duly sworn on behalf of defendant, testifies as follows:

DIRECT EXAMINATION BY MR. GROSS:

Mr. Gross: I desire to offer at this time letter marked D-1 for identification.

(Letter admitted in evidence and marked Exhibit D-1.)

Q. You are connected with the North Jersey Holding Company?

A. Yes, sir.

30 Q. In what capacity?

A. Vice president and general sales manager.

Q. Were you connected in that capacity in 1927?

A. I was.

Q. In the year 1926?

A. I was.

Q. Your company has considerable realty in Teaneck?

40 A. Yes, sir.

Q. Does it still hold any real estate in Teaneck?



*David Levy, Direct*

A. It does not. We had about 150 acres, over a million dollars, and it has all been sold.

Q. Did you have in all those dealings, have any occasion of a misrepresentation in a suit?

Mr. Marcus: I object.

The Court: I sustain the objection.

10

Q. You know Mr. Kyprie?

A. I do.

Q. By whom was he employed in 1926?

A. He was employed originally by Mr. Marini but subsequently in 1926 he worked directly under my supervision.

Q. He sold certain lots for the North Jersey Holding Company?

A. He did.

20

Q. You say you were sales manager?

A. Yes, sir.

Q. Do you recall having a conversation with Mr. Kyprie relative to the property of the company located on the westerly side of Windsor Road?

A. I do.

Q. When was that conversation?

A. The early part of 1927.

30

Q. What did he say?

A. In the year 1926 he had been selling quite a bit of property for us, but it was all residential property, strictly so. He came to me several times and asked me whether the company didn't have any business property or any property that might be construed as business property, to offer to his people. I told him the only part that might be construed as business property was this tier of lots on Windsor Road coming out of West Englewood Avenue. I told him at the same time

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*David Levy, Direct*

the entire thing was subject to the zoning ordinance of Teaneck.

Q. Did he say anything to you as to the particular relationship to this property which you now mention —

10

Mr. Marcus: I object to conversations that went on between the defendant and Mr. Kyprie.

The Court: I will allow it.

A. Mr. Kyprie pointed out that the property went directly across the easterly side of the railroad and that it would be well to take it and sell to his clients as business property.

20

Q. Is this form of contract used in making the sale?

A. It is.

Q. Did the company ever use any other form?

A. No, sir; this is the only form we ever had.

Q. Did you at any time tell Kyprie that your company was guaranteeing that this property could be used for business property?

A. No, sir.

30

Q. Did you tell Mr. Kyprie that the zoning ordinance prohibited business?

A. I certainly did.

Q. Were you familiar with the zoning ordinance?

A. In a general way.

Q. Were you familiar with the ordinances that were in effect in 1929?

A. I wasn't very positive.

40

Q. You had over a million dollars worth of property in and around Bergen County?

A. Yes, sir.



*David Levy, Direct*

Q. Particularly in West Englewood and Teaneck?

A. Yes, sir. Mr. Kyprie, during the year 1926, had been selling quite a bit of property for us but it was all residential property, strictly so. He came to me several times and asked me whether the company's didn't have any business property or any property that might be construed as business property, to offer to the public generally and particularly to his clients. I told him the only part that might be construed as business property was this tier of lots on Windsor Road, coming out of West Englewood Avenue. I told him at the same time that the entire thing was subject to some zoning ordinance of Teaneck, but without those zoning laws we were preparing to set it aside as business property; that was the part we held as the business section.

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20

Q. Did he say anything to you as to the particular relationship of this property which you now mention?

Mr. Marcus: I object to conversation that went on between the defendant company and Mr. Kyprie.

30

The Court: I will allow it.

A. Mr. Kyprie pointed out that the party right across from the Ayres property, the easterly side of the railroad, that property was sold as business, and this property was practically the same only it was on the westerly side of the railroad, and that tier of lots backed up, as it did on the railroad, and it was certainly the logical position for a business return and it would be well to take it to his client and sell it as business.

40



*David Levy, Cross*

Q. Is this the form of contract used in the making of sales?

A. It is.

Q. Did the company use any other form?

A. No; this is the only form we ever had.

10

Q. Did you at any time tell Kyprie that your company would guarantee him that this property could be used for business property?

A. No, sir.

CROSS EXAMINATION BY MR. MARCUS:

Q. After 1926 Mr. Kyprie sold property of the North Jersey Holding Company under your direction?

A. Yes, sir.

20

Q. And was acting for the company?

A. Yes, sir.

Q. In connection with the negotiation of sales?

A. Yes, sir.

Q. Made sales for your company?

A. Yes, sir.

Q. Made his own terms, did he?

A. No.

Q. Subject to your approval?

A. Subject to my approval.

30

Q. He had a right to negotiate terms?

A. Tentative, of course.

Q. And it was at the suggestion of Mr. Kyprie that you opened this tract at West Englewood?

A. It was at his immediate urgency that the thing was proposed.

Q. And then you laid out this tract in Englewood?

A. It had already been laid out.

40

Q. When did you designate the property as business property?



*David Levy, Cross*

A. We had that in reserve from the beginning of the development.

Q. For business property?

A. That is right.

Q. The values were changed as to what use it was to be used?

A. Yes, sir.

10

Q. Property on the other side was designated as residential property?

A. Yes, sir.

Q. Selling at considerably less than this property?

A. Yes, sir.

Q. About how much?

A. About 50 per cent. less, possibly 60 per cent. less.

20

Q. Are you familiar with the contract used by your company?

A. I am.

Q. Were you familiar with the clause in the contract that this property be used for business property with certain exceptions stipulated?

A. Yes, sir.

The Court: I understood you to say this was the only form of contract used.

30

The Witness: Yes.

BY THE COURT:

Q. The contract is the same for your residential property; is that correct?

A. Yes. May I have a word? Whenever we sold the residential property we left that out (indicating).

BY MR. GROSS:

Q. The only time you retained the provision about its being used for business purposes was when you used it for business purposes?

40



*David Levy, Cross*

A. Yes.

Q. Did you know Mr. Kyprie was selling this property for business purposes?

A. Yes, sir.

10 Q. Did you authorize him to say it was used for business purposes?

A. Within the limits of our printed contract.

Q. Did you say that it be limited or the use be limited?

A. I did.

Q. Did you tell Mr. Kyprie that the zoning ordinance prohibit it?

A. I certainly did.

20 Q. Were you familiar with the zoning ordinance?

A. In a general way.

Q. Were you familiar with the ordinance in effect before 1929?

A. I won't say positively.

Q. You had over a million dollars worth of property in and around Bergen County?

A. Yes, sir.

30 Q. Particularly in West Englewood and Teaneck?

A. Yes, sir.

Q. And had the sole agency?

A. Only supervisory.

Q. At the instigation or the suggestion of Mr. Kyprie you desired to sell this property for business purposes; is that correct?

A. Yes, sir.

Q. Did you know that these people were buying this property for business purposes?

40 A. I did.

Q. Did you know that there was a zoning ordinance against business property in 1927?



*David Levy, Redirect*

A. No, not particularly. We felt at that time that the zoning—

Q. I don't care what you felt, you didn't know.

REDIRECT EXAMINATION BY MR. GROSS:

Q. You say that you authorized the sale within the limits of your contract; what do you mean by that. 10

Mr. Marcus: I object, what he meant.

The Court: I sustain the objection.

Q. You say that when you were speaking to Mr. Kyprie you authorized him to sell for business purposes?

A. Yes, sir.

Q. To what extent did you authorize him to sell it for business purposes?

A. To the extent that we had the property restricted in clause "B" of the restrictions. In other words we wanted our restrictions to stay very rigidly on this property so as not to destroy the development. 20

Q. You have testified that you knew of the zoning ordinance of the town in a general way?

A. Yes, sir.

Q. Do you know what the zoning ordinance provided in reference to business property? 30

A. What?

Q. Do you know what the zoning ordinance provided with reference to business property?

A. Generally in a town—

Q. As far as you particularly learned.

A. At that time we felt —

Q. Do you know, yes or no. Do you know what the ordinance provided?

The Court: In 1927 did you know the zoning law on the lots which you sold to the complainant? 40



*David Levy, Cross*

A. Yes, sir.

Q. Had the company consulted counsel relative to the ordinance?

A. We had.

Mr. Marcus: I object.

The Court: I will allow it.

10

Q. What opinion did counsel give?

Mr. Marcus: I object. An opinion given this man is not binding on the complainants.

The Court: I will overrule the objection.

A. Counsel's opinion and advice was that the zoning ordinance on the street was unconstitutional and invalid. That they had been repeatedly upset in various parts of the state, which was also my knowledge from various readings.

20

CROSS EXAMINATION BY MR. MARCUS:

Q. From what counsel did you obtain that opinion?

A. Gross & Gross.

Q. Gross and Gross were interested in this company?

A. Yes, sir.

Q. Financially?

A. Yes, sir.

30

Q. When did you close your New York office?

A. We never closed it.

Q. Do you still maintain an office at 580 Fifth Avenue?

A. 511.

Q. Is that the same place these people were?

A. We had an office originally at 511; in 1923 we moved to 580 and then we moved back again to 511.

40

Q. In 1929 you were where?

A. We were at 580.



*David Levy, Redirect*

Q. That was a change from the original office of the company?

A. That was.

Q. And you were there in 1929 and in 1930 you moved back again?

A. In April.

Q. Did you change your banking institution?

A. No; I don't think so.

Q. Did you carry an account before 1928 in a New York bank?

Mr. Gross: I object as immaterial.

The Court: I sustain the objection.

Q. The only restriction you put on Mr. Kyprie was to see that he complied with subdivision "C"?

A. To comply with this printed form.

Q. The only restriction against business property was contained in that section?

A. Section C?

Q. Yes.

A. Also restricted in Section A.

REDIRECT EXAMINATION BY MR. GROSS:

Q. Has the company had any property in Teaneck or Bergen County in the last three years?

A. No, sir.

Q. When was the last parcel sold?

A. In 1928. In the last part of 1928.

DEFENDANT RESTS.



*George M. Kyprie, Direct*

# **Rebuttal**

GEORGE M. KYPRIE, recalled in rebuttal on behalf of the complainants testifies as follows:

DIRECT EXAMINATION BY MR. MARCUS:

10 Q. Were you ever informed by Mr. Levy that the zoning ordinance restricted this property for business property?

A. He was selling it for business property.

CASE CLOSED.

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## In Chancery of New Jersey

77-86

Between GEORGE KAZEPIS, and  
others,

*Complainants,*

—and—

NORTH JERSEY HOLDING COM-  
PANY,

*Defendant.*

ON BILL, &c.

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March 24, 1931.

MESSRS. WRIGHT, VANDER BURGH &

MCCARTHY (GEORGE I. MARCUS),

For the Complainants.

MESSRS. GROSS & GROSS (BENJAMIN

GROSS),

For the Defendant.

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(This memorandum is not to be published in the official or unofficial reports.)

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MEMORANDUM

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10 BIGELOW, V. C.

*First, second, third, fifth and sixth counts.*

20 The complainants, Kazepis and Pinios on October 18, 1927, Christon on August 2, 1927, Caplane on June 6, 1927, Calathes on June 6, 1927, and Joseph on October 18, 1927, severally purchased from the defendant parcels of land in Teaneck. They were each induced to buy by the defendant's representation that the lands could be used for stores and retail or wholesale business. Complainants allege that this representation was false and in proof thereof, present a zoning ordinance by the municipality in 1921 which prohibited stores on the lots in question and zoned these lots for residential purposes only. Defendant replies that complainants bought expressly subject to the ordinance. Each agreement of sale stipulated that the deed would contain the following restrictions:

30       “(a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force.

      “(b) No house shall be erected without a cellar, neither shall any house be erected upon any such lot, the cost of erection of which shall be less than \$8500.00.

40       “(c) There shall not be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline



*Memorandum*

or oil selling station, garage, factory or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same nor any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. Said lands may, however, be used for stores or dwellings or both for the conduct therein of retail or wholesale business, not in violation of the aforesaid provisions.

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“(d) These covenants and restrictions shall run with the land and be binding upon all owners thereof, their heirs, executors and assigns, forever.”

20

These agreements were on printed forms prepared by the defendant vendor. They should be construed, in case of ambiguity in a manner favorable to the complainants, especially in view of the fact that the defendant knew that complainants were purchasing these properties as business properties. The stipulation that the conveyance would be made subject to the zoning ordinance, coupled with the sentence “Said lands may, however, be used for stores” etc., should be taken to mean that the use of the lands for stores and business was permissible either by the terms of the ordinance or despite the ordinance. Defendant next contends that the zoning restriction forbidding stores was invalid as a matter of law; and this contention is sound. No special circumstances appear to uphold this provision of the ordinance; on the contrary, all these lots abutted a railroad and were peculiarly unsuited for residences. The representation therefore was not false.

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*Memorandum*

10 Now it happens that on September 20, 1927, the zoning amendment to our constitution was ratified by the voters of the state; but this amendment did not have the effect of making valid zoning ordinances theretofore adopted. It was not until April 3, 1928, when a new zoning law was approved which validated pre-existing ordinances. P. L. 1928, p. 274. This action of the Legislature did not, of course, make false or fraudulent the representations which had been made by the defendant the preceding summer and fall.

20 The bill of complaint alleges that defendant not only made the representation above mentioned but also represented that the property was zoned to permit retail and wholesale business and the erection of stores. The proofs do not establish that allegation. The counts which relate to the contracts above mentioned must be dismissed.

*Fourth count.*

30 The fourth count sets forth that on April 11, 1928, the complainants, Caplane and Jordan, purchased another lot in Teaneck from defendant. They were induced to do so by the same representation already mentioned as to the use to which the land might be put. The agreement of sale contained the same provisions already quoted. But this time, the representation was false; the zoning ordinance had been validated by the Act of April 3, 1928. Whether the defendant knew of the enactment of that statute is unimportant.

40 Defendant contends, however, that there should be a decree in its favor on this count because of laches or waiver. The facts are these: Caplane and Jordan first learned of the zoning ordinance



*Memorandum*

which restricted the use of their land early in February, 1929. They consulted a member of the New York Bar who investigated the matter and then on February 25, 1929, wrote defendant that his clients had recently discovered the true situation and that they rescinded their agreements, asked the refund of the moneys paid and offered to deed back the lots. The defendant, through its counsel, ten days later, replied refusing to recognize any right of complainants to rescind. Thereafter, these complainants, on the advice of their New York counsel and acting through him, made several monthly payments of the amount due the defendant. Each check was accompanied by a letter which stated, "This payment is made without prejudice to the rights of my client against you for the return of moneys paid herein for rescission because of your fraud." In May, the New York counsel of complainants engaged their present solicitors to prosecute this suit. The member of the New Jersey firm who assumed charge of the matter shortly thereafter took an extended trip to Europe and on his return laid this case aside in order to give his attention to other cases which he considered more pressing. He did not file the bill until February 26, 1930. If there were any evidence that this delay had been at all prejudicial to defendant, I would consider it sufficient to require a dismissal of the bill on the ground of laches. But no such evidence is in the case. Counsel for defendant contends that the payment made after the discovery of the misrepresentation, operated as an election by complainants to stand on their contract and waived the right to rescind. I do not think so. Election or waiver is a matter of inten-

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*Memorandum*

10      tion and the intention of the complainants to rescind clearly appears and was communicated to defendant. The payments do not show an abandonment of that intention; they indicate only that New York counsel was not entirely sure of his cause of action for rescission and desired to avoid putting his clients in default under their contract while their right to rescind was still doubtful in his mind.

There should be a decree for the complainants on the fourth count.

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## In Chancery of New Jersey

77-86

Between GEORGE KAZEPIS,  
NICK G. PINIOS, MARGARITIS  
CHRISTON, CHRISTOPHORE CAP-  
LANE, PARRY JORDAN, CHARLES  
JOSEPH and PETER CALATHE,  
*Complainants,*

—and—

NORTH JERSEY HOLDING COM-  
PANY,

*Defendant.*

ON BILL, &c.

FINAL DECREE

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This cause coming on to be heard in the presence of George I. Marcus, in behalf of Wright, Vander Burgh & McCarthy, Solicitors for complainants and in the presence of Benjamin Gross, in behalf of Gross & Gross, Solicitors for defendant; proofs having been taken in open Court, whereupon and upon considering the pleadings and proofs and the argument of Counsel for the respective parties and it appearing that the complainants, GEORGE KAZEPIS and NICK PINIOS are not entitled to the relief prayed for in the first count of the bill of complaint; and it further appearing that MARGARITIS CHRISTON, complainant is not entitled to the relief prayed for in the second count of the bill of complaint; and it further appearing that CHRISTOPHORE CAPLANE, complainant is not entitled to the relief prayed for in the third count

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*Final Decree*

of the bill of complaint; and it further appearing that PETER CALATHES, complainant is not entitled to the relief prayed for in the fifth count of the bill of complaint; and it further appearing that CHARLES JOSEPH, complainant is not entitled to the relief prayed for in the sixth count of the bill of complaint; and it further appearing that PARRY JORDAN and CHRISTOPHORE CAPLANE who are the complainants in the fourth count of the bill of complaint are entitled to the relief prayed for, it is thereupon on this                      day of JULY, 1931,

ORDERED, ADJUDGED and DECREED that the bill of complaint and the causes of action as set forth in the first, second, third, fifth and sixth causes of action be and the same hereby are dismissed, and it is further,

ORDERED, ADJUDGED and DECREED that the defendant surrender the bond and mortgage heretofore executed by the complainants, PARRY JORDAN and CHRISTOPHORE CAPLANE in the sum of Three Thousand (\$3000.00) Dollars properly endorsed for cancellation to the said complainants within ten days after the service upon the said defendant of a true but uncertified copy of the decree and it is further,

ORDERED, ADJUDGED and DECREED that the defendant pay to the complainants the sum of Ten hundred and twenty-five (\$1025.00) Dollars together with interest thereon being the amount heretofore paid to the defendant on account of the purchase price and on account of the said bond and mortgage together with interest thereon from the date of the payment of the respective amounts which payments total the sum of Ten



*Final Decree*

hundred and twenty-five (\$1025.00) Dollars, and it is further,

ORDERED, ADJUDGED and DECREED that within ten days from the date hereof, the complainants, PARRY JORDAN and CHRISTOPHORE CAPLANE shall tender to the defendant, a Bargain and Sale Deed for the premises mentioned and described in the fourth count of the bill of complaint.

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Respectfully advised:

EDWIN ROBERT WALKER,  
Chancellor.

JOHN O. BIGELOW,  
Vice Chancellor.

We hereby consent to the form of the foregoing decree.

GROSS & GROSS,  
Solicitors for Defendant.

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## New Jersey Court of Errors and Appeals

|    |                                                                                                                                                                                                                                                   |                                                                                 |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 10 | Between GEORGE KAZEPIS,<br>NICK G. PINIOS, MARGARITIS<br>CHRISTON, CHRISTOPHORE CAP-<br>LANE, CHARLES JOSEPH and<br>PETER CALATHE,<br><i>Complainants-Appellants,</i><br>—VS—<br>NORTH JERSEY HOLDING COM-<br>PANY,<br><i>Defendant-Appellee.</i> | ON APPEAL<br><br>FROM COURT OF<br><br>CHANCERY<br><br>PETITION OF<br><br>APPEAL |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|

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

The petition of GEORGE KAZEPIS, NICK G. PINIOS,  
MARGARITIS CHRISTON, CHRISTOPHORE CAPLANE,  
CHARLES JOSEPH and PETER CALATHE, the appel-  
lants in the above entitled cause, respectfully  
show that:

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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 the  
day of July, 1931, in a certain cause in the said  
Court of Chancery wherein the said George  
Kazepis, Nick G. Pinios, Margaritis Christon,  
Christophore Caplane, Charles Joseph and Peter  
Calathe were complainants and the said North  
Jersey Holding Company was defendant, in this  
respect, to wit:

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That said decree adjudges that George Kazepis  
and Nick G. Pinios are not entitled to the relief



*Petition of Appeal*

prayed for in the first count of the bill of complaint; that Margaritis Christon is not entitled to the relief prayed for in the second count of the bill of complaint; that Christophore Caplane is not entitled to the relief prayed for in the third count of the bill of complaint; that Peter Calathe is not entitled to the relief prayed for in the fifth count of the bill of complaint; and that Charles Joseph is not entitled to the relief prayed for in the sixth count of the complaint

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And petitioners appeal from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that

1. The Chancellor should have granted the relief prayed for in the First, Second, Third, Fifth and Sixth Counts of the Bill of Complaint.

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2. That the Chancellor erred in finding that the zoning restrictions of the Township of Teaneck in the County of Bergen and State of New Jersey forbidding stores to be erected upon the premises mentioned in the bill of complaint was invalid as a matter of law.

3. That the Chancellor erred in finding that the representations made by defendant-appellee to the complainants-appellants were not false.

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Petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, 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.

WRIGHT, VANDER BURGH & MCCARTHY,  
Solicitors for Appellants.

LE ROY VANDER BURGH,  
Of Counsel.

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## In Chancery of New Jersey

Between GEORGE KAZEPIS, et  
als.,

*Complainants,*

—and—

NORTH JERSEY HOLDING COM-  
PANY,

*Defendants.*

ON BILL, &c.  
NOTICE OF  
CROSS-APPEAL

To: Wright, Vander Burgh & McCarthy, Esq.  
Solicitors of complainants.

SIRS:

TAKE NOTICE that the defendant North Jersey Holding Company herein, hereby appeals from so much of the final decree entered herein on July 27th, 1931, as adjudges that the complainants Parry Jordan and Christophore Caplane are entitled to recover from the defendant the sum of \$1025.00 together with interest thereon, and from such part of said decree which adjudges that the said complainants shall tender to the defendant a bargain and sale deed which the said defendant shall accept; and that defendant thereupon shall deliver to the said complainants, properly endorsed for cancellation, a certain bond and mortgage in the sum of \$3,000.00.

Yours, &c.

Dated,  
September 28, 1931.

GROSS & GROSS,  
Solicitors of defendant.



*Notice of Cross-Appeal*

I conceive that there is good cause for the cross-  
appeal herein.

BENJAMIN GROSS,

Of counsel for defendant.

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## New Jersey Court of Errors and Appeals

|    |                                                                                                                                                                                                                               |                                                                                              |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| 10 | Between GEORGE KAZEPIS, et<br>als,<br><i>Complainants-Appellants,</i><br><br><div style="text-align: center;">—and—</div><br>NORTH JERSEY HOLDING COM-<br>PANY,<br><i>Defendant-Respondent and</i><br><i>Cross-Appellant.</i> | ON APPEAL<br>FROM THE<br>COURT OF<br>CHANCERY<br>PETITION OF<br>CROSS APPEAL<br>OF DEFENDANT |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|

20 To the Honorable, the Court of Errors and Appeals  
 in the Last Resort in all Causes:

The petition of North Jersey Holding Company,  
 defendant cross-appellant in the above entitled  
 cause, on its cross appeal, respectfully shows:

30 1. The petitioner defendant cross-appellant  
 finds itself aggrieved by that part or portion of  
 the final decree made in the Court of Chancery  
 herein by the Honorable Edwin Robert Walker,  
 Chancellor of the State of New Jersey, on the  
 advice of Honorable John O. Bigelow, Vice Chan-  
 cellor, which decree is dated July 27th, 1931 and  
 was made in a certain cause wherein George Ka-  
 zepis and others are complainants and North  
 Jersey Holding Company is defendant.

40 2. Petitioner is aggrieved by that part and por-  
 tion of the final decree which orders, adjudges and  
 decrees that the defendant in said cause pay to the  
 complainants Parry Jordan and Christophore  
 Caplane, the sum of \$1025.00 with interest, and  
 that the said complainants Parry Jordan and  
 Christophore Caplane tender to defendant a bar-  
 gain and sale deed for premises mentioned and



*Petitions of Cross-Appeal of Defendant*

described in the fourth count of the bill of complaint, and that there-upon the defendant deliver to the said complainants Parry Jordan and Christophore Caplane properly endorsed for cancellation, a certain bond and mortgage executed by the said complainants Parry Jordan and Christophore Caplane, to the defendant herein, in the sum of \$3,000.00.

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3. The grounds of the said cross-appeal of the North Jersey Holding Company, are as follows:

a. That the said complainants Parry Jordan and Christophore Caplane are not entitled to the relief prayed for in the fourth count of the bill of complaint and the decree granting such relief is erroneous because the said complainants Parry Jordan and Christophore Caplane continue to make payments upon their contract and upon the said bond and mortgage aforesaid after having full knowledge of all of the facts, and thereby elected to continue the performance of their said contract and to be bound thereby and waived any right to rescind the said contract.

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b. That the Chancellor erred in granting to the said complainants Parry Jordan and Christophore Caplane relief on the fourth count of the bill of complaint, when in fact the said fourth count of the bill of complaint should have been dismissed because the said complainants Parry Jordan and Christophore Caplane had not proved that the defendant had made false and fraudulent representations.

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c. That the Chancellor should, by the said final decree, have dismissed the fourth count

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### *Petitions of Cross-Appeal of Defendant*

of the bill of complaint herein because it appeared that the said complainants Parry Jorden and Christophore Caplane were guilty of laches in bringing their suit herein.

GROSS & GROSS,

10

Solicitors for and counsel with  
defendant-respondent and cross-  
appellant.

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## New Jersey Court of Errors and Appeals

GEORGE KAZEPIS, NICK G.  
PINIOS, MARGARITIS CHRISTON,  
CHRISTOPHORE CAPLANE,  
CHARLES JOSEPH and PETER  
CALATHE,

*Complainants-Appellants,*

—vs—

NORTH JERSEY HOLDING COM-  
PANY,

*Defendant-Appellee.*

ON APPEAL  
FROM COURT  
OF CHANCERY  
NOTICE OF  
ARGUMENT

10

SIRS:

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PLEASE TAKE NOTICE of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals, to be held at the State House, in the City of Trenton, New Jersey, on Tuesday the 2nd day of February, 1932, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Dated, December 18th, 1931.

Yours &c.

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WRIGHT, VANDER BURGH & MCCARTHY,  
Solicitors for Complainants-Appellants.

To: GROSS & GROSS, ESQS.

Solicitors for Defendant-

Appellee,

15 Exchange Place,

Jersey City, N. J.

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## New Jersey Court of Errors and Appeals

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |   |                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div style="display: flex; justify-content: space-between;"> <span>10</span> <span></span> </div> <div style="text-align: center;"> <hr style="width: 80%; margin: 0 auto;"/> <p>GEORGE KAZEPIS, <i>et als.</i>,<br/> <i>Complainants,</i><br/> <i>Cross-Respondents.</i></p> <p style="text-align: center;">—vs—</p> <p>NORTH JERSEY HOLDING COM-<br/> PANY,</p> <p style="text-align: center;"><i>Defendant,</i><br/> <i>Cross-Appellant.</i></p> <hr style="width: 80%; margin: 0 auto;"/> </div> | } | <p style="text-align: center;">ON CROSS<br/> APPEAL FROM<br/> THE COURT OF<br/> CHANCERY<br/> NOTICE OF<br/> ARGUMENT<br/> SAT BELOW<br/> WALKER, C.<br/> BIGELOW, V. C.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

20      To: Messrs. WRIGHT, VANDER BURGH & MCCARTHY,  
Solicitors of complainants, cross-respondents.

SIRS:

PLEASE TAKE NOTICE of the argument of the issue joined in this cause in the cross-appeal taken herein before the New Jersey Court of Errors & Appeals to be held at the State House in the City of Trenton on Tuesday, February 2nd, 1932 at 10:30 o'clock in the forenoon of that day, or as soon thereafter as the Court can attend to the same.

30      Dated, December 18, 1931.

Yours, &c.  
GROSS & GROSS,  
Solicitors of defendant  
Cross-appellant.



# Exhibits

## EXHIBIT C-7

New York, Feb. 23, 1929 No. 2  
 IRVING TRUST COMPANY  
 Forty-Ninth Street Office  
 49th Street at Seventh Avenue

Pay to the 10  
 order of  
 NORTH JERSEY HOLDING CO. \$112.50/100  
 One Hundred Twelve Dollars Fifty Cents Dollars  
 MARGARITIS CHRISTON.  
 For Deposit  
 NORTH JERSEY HOLDING COMPANY

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## EXHIBIT C-8

JULIUS LERNER  
 Counselor at Law  
 256 Broadway  
 New York

February 25th, 1929.

North Jersey Holding Co., Inc., 30  
 580 Fifth Avenue,  
 New York City.  
 Gentlemen:—

On behalf of Mr. Margaritis Christon, I am enclosing you herewith check for \$112.50 payable to your order which payment is made for interest accrued under the mortgage given you by him covering the West Englewood property. This payment is made without prejudice to the rights of my client in his action to recover all monies paid under his agreement with you which agreement

40



*Exhibits*

has this day been rescinded in the letter accompanying this one to you.

Yours truly,

JULIUS LERNER.

JL/1. Enc. ck.  
\$112.50.

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EXHIBIT C-9

NORTH JERSEY HOLDING COMPANY,  
Incorporated  
Postal Life Insurance Building  
580 Fifth Avenue  
New York City

April 10th, 1928.

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Mr. Margaritis Christon, Dr.,  
242 West 49th Street,  
New York City, N. Y.

On Lot No. 7, Block 263-Z:—

|                                       |           |
|---------------------------------------|-----------|
| Purchase price-----                   | \$5000.00 |
| Paid to date -----                    | 1250.00   |
| Total amount due on<br>mortgage ----- | \$3750.00 |

30

Received on account  
of mortgage ----- \$1250.00

|                                                       |           |
|-------------------------------------------------------|-----------|
| Balance due on mortgage---                            | \$2500.00 |
| Interest on \$2500.00 from<br>11/1/27 to 5/1/28 ----- | 75.00     |
| 1927 Taxes due -----                                  | 6.12      |

Total amount due to date ----- \$1331.12

Received payment,

NORTH JERSEY HOLDING COMPANY, Inc.,

40

By: DAVID S. LEVY,  
Vice-President.



*Exhibits*

## EXHIBIT C-12

AGREEMENT made and entered into this SIXTH day of JUNE, 1927 between NORTH JERSEY HOLDING COMPANY, a Corporation of New Jersey, party of the first part; and CHRISTOPHORE CAPLANE of 785 COLUMBUS AVENUE, NEW YORK CITY, N. Y. party of the second part;

10

WITNESSETH: That the said party of the first part, in consideration of the sum of One (\$1.00) Dollar, and of the covenants, agreements and conditions hereinafter contained and agreed to be done and performed by the said party of the second part, and in further consideration of the sum of

FIVE THOUSAND EIGHT HUNDRED NINETY DOLLARS (\$5890.00)

20

agreed to be paid and satisfied by the said party of the second part, as hereinafter mentioned, the said party of the first part will well and sufficiently convey to the said party of the second part, his heirs or assigns, by deed of general warranty, a good and marketable title in fee simple, free from all encumbrances except as hereinafter stated, on or before June 14th, 1927;

30

All those certain lots of land in the Township of Teaneck in the County of Bergen and State of New Jersey which on a certain map on file in the office of the Clerk of Bergen County entitled "Map of West Englewood Manor, West Englewood, N. J." made by Wm. C. Beuscher, C. E. & Surveyor, are known as lots numbered 6 in block 263-Z as laid down on said map.

And the said party of the second part, for himself, his heirs, executors, administrators, and

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*Exhibits*

assigns, do covenant, promise and agree, to and with said party of the first part, that he, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied unto the said party of the first part the said sum of

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FIVE THOUSAND EIGHT HUNDRED NINETY DOLLARS (\$5890.00)

as and for the purchase money of the foregoing described lands, in the following manner, that is to say:

Upon the execution and delivery of this agreement, the receipt whereof is hereby acknowledged, the sum of

ONE THOUSAND FOUR HUNDRED SEVENTY-TWO DOLLARS 50/100 (\$1472.50)

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Beginning July 15th party of the second part agrees to pay the party of the first part the balance at the rate of \$125.00 promptly on the first day of each and every month, with interest at 6% per annum on all unpaid balances then due, until the party of the second part shall have paid in, including the down payment of \$1472.50, the principal sum of \$5,890.00.

30

And the said party of the second part does further covenant and agree to assume and pay all taxes upon said lands from and after the date of this contract, and that the taxes thereon for the current year shall be adjusted and apportioned between the parties hereto as of the date hereof, upon the closing of title.

Said lands and premises are to be conveyed subject to any assessment for improvements made unconfirmed or confirmed after the date hereof.

40

It is hereby mutually agreed between the parties hereto, that the deed so to be given by the said



*Exhibits*

party of the first part to the said party of the second part, shall contain the following covenants on the part of the said party of the second part, his heirs, executors and assigns, and the following restrictions:

(a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force.

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(b) No house shall be erected without a cellar, neither shall any house be erected upon any such lot, the cost of erection of which shall be less than \$8,500.00.

(c) There shall not be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline or oil selling station, garage, factory or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same nor any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. Said lands may, however, be used for stores or dwellings or both for the conduct therein of retail or wholesale business, not in violation of the aforesaid provisions.

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(d) These covenants and restrictions shall run with the land and be binding upon all owners thereof, their heirs, executors and assigns, forever.

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IN WITNESS WHEREOF, the said parties have



*Exhibits*

hereunto set their hands and seals the day and  
year first above written.

NORTH JERSEY HOLDING COMPANY,

By DAVID S. LEVY,  
Vice President

10 SEAL  
Attest:

A. LEVITON,  
Secretary.

CHRISTOPHORE CAPLANE, (S. L.)

Signed, Sealed and  
Delivered in the  
Presence of:  
GEORGE M. KYPRIE.

20

---

EXHIBIT C-13

THIS DEED

Made the fourteenth day of June in the year one  
thousand nine hundred and twenty-seven  
*Between*

30

NORTH JERSEY HOLDING COMPANY,  
a corporation of the State of New Jersey,  
party of the first part,  
hereinafter known as the Grantor,

*And*

CHRISTOPHORE CAPLANE,  
of the City, County and State of New York,  
party of the second part,  
hereinafter known as the Grantee:

*Witnesseth*, that in consideration of the sum of  
—One (\$1.00) Dollar and other valuable  
consideration—

40

the said Grantor, does grant, bargain, sell and



*Exhibits*

convey, unto the said Grantee, his heirs and assigns forever, all that certain tract of land and premises situate in the Township of Teaneck in the County of Bergen and State of New Jersey, which on a certain map on file in the Office of the Clerk of Bergen County entitled "Map of West Englewood Manor, West Englewood, N. J." made by Wm. C. Beuscher, C. E. & Surveyor, are known as lot numbered six (6) in Block 263-Z as laid down on said map.

10

The party of the second part, for himself, his heirs, executors and assigns, does hereby covenant and agree with the said party of the first part, its successors and assigns, that neither the said party of the second part, nor any owner of the said lands and premises, shall use or permit to be used the said lands or premises or any part thereof, excepting upon the covenants and restrictions following:

20

- (a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force.
- (b) No house shall be erected without a cellar, neither shall any house be erected upon any such lot, the cost of erection of which shall be less than \$8500.00.
- (c) There shall not be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline or oil selling station, garage, factory or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same nor any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. Said lands

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*Exhibits*

may, however, be used for stores or dwellings or both for the conduct therein of retail or wholesale business, not in violation of the aforesaid provisions.

- 10 (d) These covenants and restrictions shall run with the land and be binding upon all owners thereof, their heirs, executors and assigns, forever.

And the said grantee does covenant and agree to pay unto the said grantor, taxes that may be assessed against the premises hereby conveyed, for the year 1927, by paying such proportion of the amount of the tax bill rendered by the Township of Teaneck for the entire tract of which the aforescribed premises are part, as the above described premises in acreage bears to the acreage of said entire tract.

20

Subject to the lien of a mortgage made by the said party of the second part to the said party of the first part, bearing even date, given to secure the payment of the sum of Forty-four Hundred Seventeen Dollars Fifty Cents (\$4417.50) part of the consideration or purchase price of said lands.

- 30 *To Have and to Hold* said premises with the appurtenances unto the said grantee his heirs and assigns forever.

The said NORTH JERSEY HOLDING COMPANY  
*Covenants:*

1. That it is lawfully seized of the said land;
2. That it has the right to convey the said land to the grantee;
3. That the grantee shall have quiet possession of the said land free from all incumbrances; except as aforesaid.
- 40 4. That the grantor will execute such



*Exhibits*

further assurances of the said land as may be requisite;

5. That it will warrant generally the property hereby conveyed.

*In Witness Whereof*, the said grantor has caused these presents to be signed by its president, attested by its assistant secretary and affixed its corporate seal hereto the day and year first above written.

10

*Signed, Sealed and Delivered  
in the Presence of*

NORTH JERSEY HOLDING COMPANY

By ISAAC GROSS,

President.

Attest: FRANCES COVNER,  
Asst. Secretary.

20

*State of New Jersey,* } ss:  
*County of Hudson* }

*Be it remembered*, That on this fourteenth day of July, Nineteen hundred and twenty-seven before me the subscriber, a Master in Chancery of New Jersey, personally appeared Frances Covner and made proof to my satisfaction that she is the assistant secretary of North Jersey Holding Company the Grantor named in the foregoing Instrument; that she well knows the corporate seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that the said seal was so affixed and the said Instrument signed and delivered by Isaac Gross who was at the date thereof the President of said corporation, in the presence of this deponent and said President, at the same time acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, and as the voluntary act and deed of said corporation, and that deponent, at the same time, subscribed her

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*Exhibits*

name to said Instrument as an attesting witness to the execution thereof.

*Sworn and subscribed before  
me at Jersey City the  
date aforesaid*

FRANCES COVNER

10

LEO BLUMBERG

Master in Chancery of New Jersey

---

NORTH JERSEY HOLDING COMPANY  
a corporation of N. J.

TO  
CHRISTOPHORE CAPLANE

Dated, June 14th, 1927

20

*Received* in the Clerk's Office of the County of Bergen, N. J., on the 26 day of July A. D., 1927, at 2.57 o'clock, in the afternoon, and Recorded in Book 1496 of DEEDS for said County, on page 598 &c.

JAMES W. MERCER,  
County Clerk.

Indexed.

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EXHIBIT C-16

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NORTH JERSEY HOLDING COMPANY, INC.

Empire Trust Building

580 Fifth Avenue

New York City

January 31, 1929.

Messrs. George Kazepis and Nick G. Pinios,  
1254 Westchester Avenue,  
Bronx, N. Y.

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Gentlemen:

Regarding mortgage which you assumed from Charles Joseph covering lot 3 in 263-Z, we have not



*Exhibits*

received any payment thereon since September 6, 1928. You must realize that you are greatly in arrears on this mortgage, and would you advise us when you intend making another payment on same.

Yours truly,

NORTH JERSEY HOLDING COMPANY, Inc.

By: J. FRANK.

JF:PL

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EXHIBIT C-17

JULIUS LERNER

Counselor at Law

256 Broadway

New York

Barclay 7787

February 25th, 1929

North Jersey Holding Co. Inc.,

580 Fifth Avenue,

New York City.

*Re: West Englewood Manor*

Gentlemen:

20

30

My clients Christophore Caplane, Parry Jordan, Nikoleta and Betty Calathes and Margaritis Christon, purchased from you during 1927 and 1928 certain of your lots in the above described property development with the express understanding that these lots could be used for erecting stores and dwellings or both subject to certain restricted types of business which were expressly excluded.

They have recently discovered that only one family houses are permitted to be built upon their lots and the erection of a store would not be per-

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*Exhibits*

mitted. Under the circumstances they must request that you take back your lots and refund to them all the monies paid by them on account of the purchase price. They rescind their agreements with you.

10

I am authorized by them to formally tender to you herewith a surrender of every and any benefit they have received under their agreements with you, by way of assignment, execution and delivery of deeds or in any other way you desire, upon repayment to them of the consideration paid thus far.

20

Please advise me by return mail when and where you desire to arrange for the details in connection with effectuating the rescission of these agreements. Unless I hear from you within the next ten days, I shall assume that you refuse to accede to my client's request and I shall start action against you on their behalf to recover all the monies paid by them for the lots in question.

Yours truly,

JULIUS LERNER.

JL/1.

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EXHIBIT C-18

JULIUS LERNER

Counselor at Law

256 Broadway

New York

March 8th, 1929.

40

North Jersey Holding Co.,  
580 Fifth Avenue,  
New York City.

Gentlemen:—

Enclosed herewith you will please find check for



*Exhibits*

\$112.50 payable to your order which payment is to be credited to the Calathes account, \$104.16 against the mortgage principal and \$8.34 for interest on the unpaid balance. Kindly send statement of receipt to Calathes in my care.

This payment is made without prejudice to the rights of my client against you for the return of moneys paid herein for rescission because of your fraud.

Yours truly,

JULIUS LERNER.

JL/1.

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EXHIBIT C-19

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JULIUS LERNER  
Counselor at Law  
256 Broadway  
New York

April 17th, 1929.

North Jersey Holding Co.,  
580 Fifth Avenue,  
New York City.

30

Gentlemen:—

Enclosed herewith you will please find check for \$111.96 payable to your order which payment is to be credited to the Calathes account, mortgage principal and interest on the unpaid balance. Kindly send statement to date to Mr. Calathes in my care. When I sent you a payment for him last month I made the same request but you failed to send same to either me or my client.

40

This payment also is made without prejudice to the rights of my client against you for the re-



*Exhibits*

turn of moneys paid herein for rescission because  
of your misrepresentation at the time of sale.

Yours truly,

JULIUS LERNER.

JL/1. Enc. ck \$111.96.

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EXHIBIT D-1

GROSS & GROSS  
Counselors at Law  
15 Exchange Place  
Jersey City, N. J.

March 6, 1929.

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Julius Lerner, Esq.,  
256 Broadway,  
New York City.  
Dear Sir:

Your letter of the 25th ult. written to NORTH  
JERSEY HOLDING COMPANY on behalf of your clients  
Christophore Caplane, Parry Jordan, Nikoleta and  
Betty Calathes and Margaritis Christon, has been  
turned over to us for a reply.

30

Our client's position in the matter is that no  
misrepresentations whatever were made to these  
parties to induce them to make their purchase  
and they received all that their contract and deed  
called for at the time.

Under these circumstances we must of course  
refuse to recognize any right on the part of your  
clients to rescind their agreement.

40

Meanwhile our client desires to acknowledge  
receipt of a check enclosed with your letter for



*Exhibits*

the payment of interest on the purchase money mortgage.

Yours very truly,  
GROSS & GROSS.

IG.FC

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## New Jersey Court of Errors and Appeals

## STIPULATION

10 GEORGE KAZEPIS, NICK G.  
PINIOS, MARGARETIS CHRISTON,  
CHRISTOPHORE CAPLANE,  
CHARLES JOSEPH and PETER  
CALATHE,

*Complainants-Appellants,*

—VS—

20 NORTH JERSEY HOLDING COM-  
PANY,

*Defendant-Appellee.*

ON APPEAL  
FROM COURT OF  
CHANCERY  
STIPULATION

IT IS HEREBY STIPULATED by and between the solicitors for complainants and defendant, that in lieu of printing in the record on appeal certain exhibits, that this stipulation be made a part of the record with the same effect and extent as though the exhibits were printed at length.

30 1. That Exhibit C-1 is the Zoning Map of the Township of Teaneck which accompanied Zoning Ordinance adopted September 29, 1921, and that said map shows the property in question of all the complainants restricted against stores and business.

2. That Exhibit C-2 was the original Zoning Ordinance of the Township of Teaneck adopted September 29, 1921, and showed the property in question of all of the complainants to be zoned against business or stores.

40 3. That Exhibit C-3 was the original Zoning Ordinance of the Township of Teaneck adopted November 6, 1929, and zoned the property of all of the complainants against stores and business.



*Stipulation*

4. That Exhibit C-4 was a "Map of West Englewood Manor" referred to in the contracts and deeds and showed the property of all of the complainants.

5. That Exhibit C-5 is an agreement between the North Jersey Holding Company and Kazepis and Pinios dated October 18, 1927, and except for the description of the property to be conveyed and the amount and terms of payment is in all respects similar to Exhibit C-12, which is an agreement between the North Jersey Holding Company and Christophore Caplane.

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6. That Exhibit C-6 is a deed dated November 1, 1927 from the North Jersey Holding Company to Margaretis Christon, and except for the description of the property and the amount of the mortgage is in all respects the same verbiage as Exhibit C-13.

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7. That Exhibit C-10 is a contract dated June 6, 1927 between the North Jersey Holding Company and P. Calathes, and except for description of property and amount to be paid is in all respects similar to Exhibit C-12.

8. That Exhibit C-11 is a deed from the North Jersey Holding Company to Nikoleta Calathes and Betty Calathes dated June 14, 1927, and except for description of property and amount to be paid is in all respects similar to Exhibit C-13.

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9. That Exhibit C-14 is a contract dated April 11, 1928 between North Jersey Holding Company and Christophore Caplane and Parry Jordan, and except for description of property and amount to be paid is in all respects similar to Exhibit C-12.

10. That Exhibit C-15 is a deed dated May 1, 1928 between North Jersey Holding Company and Christophore Caplane and Parry Jordan, and ex-

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*Stipulation*

cept for description of property and amount of mortgage is in all respects similar to Exhibit C-13.

WRIGHT, VANDER BURGH & MCCARTHY,  
Solicitors of Complainants.

GROSS & GROSS,  
Solicitors of Defendant.

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72 MAY. 7. 1932

## New Jersey Court of Errors and Appeals

*Between*

GEORGE KAZEPIS, *et als*,  
*Complainants-Appellants,*

and

NORTH JERSEY HOLDING  
COMPANY,  
*Defendant-Respondent  
and Cross-Appellant.*

ON APPEAL  
FROM THE  
COURT OF  
CHANCERY

SAT BELOW:  
EDWIN ROBERT  
WALKER, C.  
JOHN O. BIGELOW,  
V. C.

### BRIEF OF COMPLAINANT-APPELLANT

#### Statement of Facts

This action is brought to rescind certain contracts and conveyances upon the ground of defendant's fraud and for a return of the purchase money.

The Court of Chancery made a decree in favor of the complainants, Caplane and Jordan, upon the Fourth Count in the complaint and dismissed the bill as to the First, Second, Third, Fifth and Sixth Counts of the complaint.

This appeal brings up for review the decree of the Court of Chancery dismissing the several counts of the bill of complaint and there is a cross appeal upon behalf of the defendant asking for a reversal of the decree in favor of the complainants upon the Fourth Count.



George M. Kyprie was the agent for the defendant company in the sale of its lots at Teaneck, New Jersey. (Case, p. 83). Kyprie took Margaritis Christon to the property and showed him lots and told him they were the only business lots on that side of the track. They backed up to the railroad. Kyprie told him he could build stores on them and that the residential lots were much cheaper. Christon bought a lot 50 x 100 feet for \$5,000. On the opposite side of the street the residential lots were \$800 or \$1,000, a big difference in price. On August 2, 1929, a written agreement was entered into between Christon and the defendant for the purchase of lot 7 in Block 263-Z on map entitled "Map of West Englewood Manor, West Englewood, N. J." This agreement provided that the following covenants were to be inserted in the deed:

"(a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force.

"(b) x x x x

"(c) There shall not be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline or oil selling station, garage, factory or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same or any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. *Said lands may, however, be used for stores or dwellings or both for the conduct therein of retail*



*or wholesale business, not in violation of the  
aforesaid provisions. (Italics ours.)*

On November 1, 1927, the defendant conveyed said lot to Christon, which deed contained the covenants above set forth.

The first part of February, 1929, Christon first discovered that the lot was zoned by the Township of Teaneck against stores and business. (Case, p. 85.) He then notified the other complainants herein who had bought lots and they immediately went to Julius Lerner, a New York attorney, who handled the matter from that time. Christon paid \$2,500 in cash and executed a purchase money mortgage for \$3,750.

Christon, after discovering at Teaneck that the lots were not business property, went to the office of the defendant in New York and told Mr. Levitan, the Secretary, that the lots were not business property and Levitan said if they were not business he would refund the money. He asked Christon's address but he did not hear from him. (Case, p. 89.) Christon also asked Mr. Levy, the Vice-President of the defendant, before signing the contract, if the lots were business and he verified Mr. Kyprie's statement. (Case, p. 91.) Christon read the contract before signing and he asked about the zoning clause and they told him that it was the usual form they put in every contract. (Case, p. 92.) Christon had gone to school with Kyprie in the old country and knew him very well.

The Zoning Ordinance of the Township of Teaneck was adopted September 29, 1921, and restricted the property of all the complainants against business or stores. On November 6, 1929, another Zoning Ordinance was adopted by the Township of Teaneck which also restricted all



of the complainants' property against stores and business. (Case, Stipulation, p. 174.)

Julius Lerner, upon being retained by the complainants in February 1929, made a personal investigation and on February 25, 1929, wrote a letter to the defendant stating that complainants had bought their property with the express understanding that the lots could be used for erecting stores and that they had recently discovered that only one family houses were permitted to be built and stores would not be permitted and requesting that the defendant take back the lots and refund the money paid and tendering a surrender of any benefits and execution of deeds, etc., upon repayment of the consideration paid. (Case, Ex, C-17, p. 169.)

Lerner made payments of interest on the contracts after February, 1929, but in each instance the payments were made without prejudice to the rights of the complainants to recover all monies paid under the agreements. (Case, p. 125, Ex. C-8, p. 159.)

Lerner contemplated starting suit in New York but after finding that the defendant had no New York office in May 1929 he consulted LeRoy Vander Burgh of the law firm of Wright, Vander Burgh & McCarthy, of Hackensack. The bill in this case was not filed until February, 1930, Vander Burgh in the interim having taken an extended trip to Europe and upon his return taken up more pressing matters before starting this action.

David Levy, Vice President and general sales manager of the defendant, testified the residential lots opposite the lots sold the complainants were sold for 50% to 60% less. The contracts were on printed forms prepared by the defendant. Levy knew Kyprie was selling these lots to the



complainants for business purposes. Levy did not know the zoning ordinance in Teaneck prevented business on these lots in 1927. (Case, p. 137.) Later he stated that he did know of it and had consulted counsel. (Case, p. 138.)

Peter Calathes purchased lot No. 5 from the defendant through Kyprie, who told him the property was the only property for business. The lot was 50 x 100 and cost \$5,000, and the property opposite could be bought for \$800, for 100 feet. Calathes paid on account of principal \$2,395.68 and \$296.28 for interest and \$32.75 taxes. Calathes discovered the lots were zoned against business through Christon and went to Lerner who took care of matters after that. (Case, pp. 94-98.) Calathes' contract was dated June 6, 1927 and deed was dated June 14, 1927, and both contract and deed contained the same covenants as in the Christon papers. (Case, Stipulation, p. 175.)

Kyprie testified Levy told him the lots he sold the complainants were business property. On cross examination he was asked:

Q. Mr. Levy—what did he say—there were no restrictions in the deed?

A. He said there were no restrictions for business and I asked him if they were included in the deed and contract and he said yes, and the contract specifically states it is business property, right in the contract, it mentions the special clause where they object to certain trades and manufacturies.

Q. I understand nothing was said by Mr. Levy about the zoning law?

A. No.

Q. Did you say anything about it in talking to these prospects?

A. No.



Q. Did you ever talk about it?

A. No.

Q. You actually told them (the complainants) they could use it for stores and business?

A. Yes, sir; it was specified here.

Q. And it was specified in the contract?

A. Yes, sir.

Q. Was this written contract for the so-called business property different from the residential property?

A. Yes, sir.

Q. You didn't specify in the residential property that business could be had?

A. Restricted to one-family houses.

Christophore Caplane purchased a lot through Kyprie under the same representations. His contract was dated June 6, 1927 and the deed dated June 14, 1927. He and Parry Jordan purchased another lot. The contract was dated April 11, 1928 and the deed dated May 1st, 1928. Both these contracts and deeds contained the same covenants as in the Christon deeds. (Case, pp. 108-110.)

George Kazepis and Nick G. Pinios bought lots through Kyprie under the same representations. Their contract was dated October 18, 1927 and contained the same covenants as the Christon contract.

## POINT I

**The proof establishes the fact that the defendant falsely represented the lots to be zoned to permit stores and business.**

The Vice-Chancellor in his memorandum states that the proofs do not establish the allegation that the defendant represented that the property



was zoned to permit retail and wholesale business and the erection of stores. We respectfully submit that the Court erred in this conclusion.

The facts are that Levy, the Vice President and General Sales Manager of the defendant, told Kyprie the salesman that the lots were business lots. Kyprie told the complainants that this was the fact. In the printed contract prepared by the defendant the lots were sold subject to zoning restrictions and the second paragraph following unequivocally, stated that the lots could be used "for stores or dwellings or both for the conduct therein of retail or wholesale business." Surely no other inference could be drawn from the facts in this case than that, coupled with the express statement of the agent that stores could be erected, the language of the contract, by the only inference that can be drawn, is to the effect that the zoning ordinance permits stores and business. The court in its conclusions (Case, p. 143) says:

"The stipulation that the conveyance would be made subject to the zoning ordinance, coupled with the sentence "Said lands, may, however, be used for stores," etc., should be taken to mean that the use of the lands for stores and business was permissible either by the terms of the ordinance or despite the ordinance."

We submit that the complainants under all of the circumstances could conclude, as they did, that it meant "by the terms of the ordinance" and this representation was false. Acting upon this false representation they purchased the lots, paying more than twice the cost of lots on the same street which were restricted for dwellings.

In *Norfolk & New Brunswick Hosiery Co. v. Arnold*, 49 Eq. 390 the court at p. 395 said:



"The principle is well settled that if a person makes a representation of a fact, as of his own knowledge, in relation to a subject-matter susceptible of knowledge, and such representation is not true; if the party to whom it is made relies and acts upon it, as true, and sustains damage by it, it is a fraud and deceit, for which the party making it is responsible."

In equity an untruthful representation of a material fact, though there be no moral delinquency, is deemed to be fraudulent.

*Commercial Casualty &c. vs. N. J. Fidelity*, 100 Eq. 92;

*Eibel v. Von Fell*, 55 Eq. 670;

*Straus v. Norris*, 77 Eq. 33;

*Cowley v. Smyth*, 46 N. J. L. 380.

The fact was material because if the ordinance was unreasonable in respect to its regulations of the lots in question, the only remedy of the complainants was to seek the discretionary writ of mandamus to have it so declared, thereby involving great expense.

A municipal ordinance, like an act of the legislature, is presumed to be constitutional and binding, unless and until it is held to be unconstitutional by judicial determination.

*Overpeck Land Corp. vs. Ridgefield Park*, 104 N. J. L. 402.

Furthermore, at the time of the discovery by the complainants, of the fact that the zoning ordinance prohibited stores and business, to wit, in February, 1929, the constitutional amendment had been adopted, the new zoning act had been passed by the legislature and been approved April 3, 1928 (P. L. 1928, p. 274) and the complainants were without even the possible remedy of mandamus.

They had on their hands lots admittedly pur-



chased for at least twice their real value.

This court will not permit the defendant through false statements of material facts to lull the complainants into a sense of security, whereby they did not discover the falsity of the representations until after any possible remedy was denied to them by the passage of the legislation above mentioned.

The testimony of Kyprie, the agent of the defendant, shows clearly that he interpreted the contract and the statements of his principal to mean that the lots were zoned for business and stores and so informed the complainants.

## POINT II

**In any event, the false representation was material as to all contracts dated on or after September 20, 1927, the date of the ratification of the Constitutional Amendment.**

The court in the case *sub judice* in its memorandum opinion denying the motion to strike the complaint said:

"Defendant represented falsely that the property was zoned to permit retail and wholesale business and the erection of stores. This was a material misrepresentation even though the zoning ordinance was invalid. In the first place, if the representation had been true, the purchasers could readily obtain building permits for the erection of stores and could have engaged in business on their property without trouble. But since the representation was false, it would have been necessary for them by mandamus or other expensive litigation to establish the invalidity of the ordinance. The issuance of a mandamus is discretionary. After September 20, 1927, the Supreme Court generally refused these writs in zoning cases. Defendant was



selling to complainants law suits of which the outcome was doubtful.

In the second place, the existence of the invalid ordinance indicated that the governing body of Teaneck was of the opinion that this property should be zoned against stores and that when and if authority was given to the municipality to pass a valid zoning ordinance, they would exercise it by prohibiting stores on the premises. A representation of an existing fact from which further action can be forecast with a reasonable degree of assurance is a material representation." (Case, pp. 48-49.)

The case of *Koplin vs. So. Orange*, 6 Misc. Rep. 489 was submitted to the Supreme Court on June 3, 1927, i.e., before the ratification of the Constitutional Amendment on September 20, 1927 and before the new zoning act approved April 3, 1928, nevertheless the court took judicial notice of the constitutional amendment and statute and refused the writ of mandamus.

It is therefore fair to assume that after the ratification of the Constitutional Amendment on September 20, 1927, and having in mind that at the date of the ratification there was already in force a zoning ordinance in Teaneck, that the Supreme Court would have refused to grant a writ of mandamus to these complainants.

The contracts of the following complainants were dated after September 20, 1927, to wit:

Christophore Caplane and

Parry Jordan ----- April 11, 1928

George Kazepis and

Nick G. Pinios ----- October 18, 1927

The deed in the Christon case was dated November 1st, 1927. Inasmuch as the misrepresentation was recited in the deed, Christon is in the same position as Kazepis & Pinios.

The decree in favor of the complainants Ca-



plane and Jordan is not appealed from but it is respectfully submitted that if this court does not reverse the decree of the Court of Chancery as to all of the other complainants for the reasons given under Point I, then at least, said decree should be reversed as to the complainants George Kazepis and Nick G. Pinios and Margaritis Christon for the reasons set forth under this point.

The case of Mortgage & Investment Co. of New Jersey vs. Ronrel Realty Co. 150 Atl., Rep. 424 can be clearly distinguished from the case *sub judice* as in that case the alleged misrepresentation was discovered in July, 1927, yet nothing was done until after the constitutional amendment had been ratified. The court also held that there had been an election to stand by the conveyance, no affirmative steps having been taken and the question only arising upon an attempt to resist the foreclosure of the purchase money mortgage.

### POINT III

**The complainants were not in laches and any delay in bringing suit was not harmful to defendant.**

The complainants discovered the fraud in the early part of February, 1929, and immediately consulted Julius Lerner, a New York attorney. Lerner investigated the matter and on February 25, 1929, wrote to the defendant repudiating the contracts and demanded a return to *status quo ante*. Thereafter, the complainants, upon advice of New York counsel, made several payments. Each check was accompanied by a letter which stated, "This payment is made without prejudice



to the right of my client against you for the return of moneys paid herein for rescission because of your fraud." In May, New York counsel engaged New Jersey counsel to prosecute this suit. The member of the New Jersey firm who assumed charge of the case shortly thereupon took an extended trip to Europe and on his return laid this case aside to give his attention to other cases which he considered more pressing. He did not file the bill until February 26, 1930. There is absolutely no evidence that this delay had been at all prejudicial to the defendant.

The payments on account after discovery of the fraud was not an election. Election is a matter of intention and in this case the contracts were promptly repudiated and each payment was made without prejudice.

This court in its memorandum opinion said:

"The payments do not show an abandonment of that intention; they indicate only that New York counsel was not entirely sure of his cause of action and desired to avoid putting his client in default under their contract while their right to rescind was still doubtful in his mind."

Vice Chancellor Green said in *Lyman v. Warren*, 53 N. J. Eq. 313, at p. 321:

"I do not understand that mere delay in bringing a suit will deprive a party of his remedy, unless such neglect has so prejudiced the other party by loss of testimony or means of proof, or changed relations, that it would be unjust to now permit him to exercise his right."

Also see:

*Farr v. Hauenstein*, 69 Eq. 740;

*Lundy v. Seymour*, 55 Eq. 1.



**POINT IV**

**The decree of the Court of Chancery should be affirmed as to Caplane and Jordan on the Fourth Count and reversed as to the other complainants on the First, Second, Third and Fifth Counts.**

Respectfully submitted,

WRIGHT, VANDER BURGH & MCCARTHY,  
Solicitors of Complainants.

LE ROY VANDER BURGH,  
Of Counsel.



# CHAPTER IV

The house of the Count of Charny should be situated in England and London in the North and viewed as to the other countries on the East, South, West and North.

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## New Jersey Court of Errors and Appeals

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Between

GEORGE KAZEPIS, *et als.*,  
*Complainants-Appellants,*

and

NORTH JERSEY HOLDING COMPANY,  
*Defendant-Respondent*  
*and Cross-Appellant.*

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ON APPEAL FROM  
THE COURT OF  
CHANCERY

### BRIEF OF DEFENDANT-RESPONDENT AND CROSS-APPELLANT

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#### Prefatory Statement

This was a suit brought to rescind six *executed* contracts for the sale of lands in Teaneck, N. J. The basis of the suit was an alleged fraudulent misrepresentation by the defendant. All six complainants brought the action by a single bill, containing (as designated in the bill of complaint) six separate counts.

The complainants were all vendees in these various contracts, which were identical in form except as to different dates on which they were made, and different properties described in each.

The court below dismissed the bill of complaint as to five of the counts, but sustained the right



of two of the complainants to recover on the fourth count in the bill.

Complainants are appealing as to the five counts in the bill which the court dismissed, and the defendant appeals from that portion of the decree which sustained the fourth count.

### Statement of Facts

The defendant owned a large tract of land in Teaneck, Bergen County. It laid this out into lots, and at the time that this suit was brought, had disposed of the entire property (Case, p. 139, line 30).

The complainants bought their respective lots from the defendant on different dates, and in each case the contract contained the following provisions, among others:

“(a) This conveyance is made subject to any and all restrictions governing or controlling the use of said lands imposed by any zoning or municipal ordinance adopted by the Township of Teaneck and now in force.

“(b) No house shall be erected without a cellar, neither shall any house be erected upon any such lot, the cost of erection of which shall be less than \$8,500.00.

“(c) There shall not be erected upon said lands, or any part thereof, nor shall the same be used or permitted to be used as a gasoline or oil selling station, garage, factory or place where manufacturing of any kind shall or may be carried on, nor any warehouse or place for storage of goods or other property; nor shall the same nor any part thereof be used or occupied, or permitted so to be, for any of the purposes aforesaid. Said lands may, however, be used for stores or dwellings



or both for the conduct therein of retail or wholesale business, not in violation of the aforesaid provisions.

“(d) These covenants and restrictions shall run with the land and be binding upon all owners thereof, their heirs, executors and assigns, forever.”

In each case involved in this suit, the respective titles thereafter closed at or about the time designated in the respective contracts, deeds were delivered by the defendant to the various complainants, and purchase money mortgages were in turn executed by the respective complainants to the defendant, which were thereafter recorded.

In each instance, the deed of conveyance to the respective complainants contained the same restrictions and covenants which were contained in the contract (Case, p. 165, lines 20-40, p. 166, lines 1-30).

All of the contracts sued upon and deeds delivered pursuant thereto, with the single exception of the one held by complainants Caplane and Jordan (which complainants prevailed in this suit), were dated prior to November 1, 1927. In fact, the last deed delivered, with the single exception aforesaid, was dated November 1, 1927 (see stipulation of counsel, Case, pp. 174, 175, etc.). The contract made with Caplane and Jordan, who prevailed in this suit, was made on April 11, 1928, and the deed thereunder was delivered on May 1, 1928 (see stipulation of counsel, Case, p. 175, lines 30-40).

The lands in question all abutted on the right of way of the West Shore Railroad, and principally for this reason, were not considered by defendant as available for residential purposes.



At the time that the various contracts were made, there was in force an Ordinance of the Township of Teaneck, which had been passed in September, 1921, and which showed the property in question restricted against use for stores and business structures. The complainants, from the time of the purchase of their respective lots, continued the payments on account of principal and interest on the purchase money mortgages, which they had given to defendant.

After the constitutional amendment dealing with zoning had been passed in September, 1927, an Enabling Act thereunder was passed, to take effect April, 1928. The Township of Teaneck, on *November 6, 1929*, passed a new Ordinance restricting the use of the property in question against stores and business structures.

Complainants claim that during February, 1929, they learned for the first time, that the property in question could not be used for business purposes and stores. They all immediately retained one Lerner, a New York attorney, to represent their respective interests in the matter (Case, p. 124, lines 1-30). Lerner communicated with the defendant by letters, the first of which was written on February 25, 1929 (Ex. C-17, Case, p. 169), in which, for the first time, defendant was advised that the complainants claimed that they had been induced to enter into their respective contracts by the fraudulent representation that the lands in question could be used for the erection of stores and business structures.

The attorneys of the defendant answered this letter of Lerner's on March 6, 1929 (Ex. D-1, Case, p. 172), in which the defendant took the position that it would not permit a rescission, because no



fraud had been practiced. *Thereafter, with full knowledge of the defendant's position, complainants, through their attorney, made several payments on account of principal and interest on their respective mortgages* (Ex. C-8, Case, p. 159; Ex. C-18, p. 170; Ex. C-19, p. 171). (See brief of complainants, bottom of page 11.) (Case, p. 125, lines 10-30.)

The New York attorney continued to make these payments for his clients on account of principal and interest on the purchase money mortgages, until May, 1929, when he turned the matter over to the New Jersey solicitors of complainants, who then took charge of it. The New Jersey solicitors did nothing with the case until February, 1930, when the bill of complaint in this cause was filed.

The learned Vice-Chancellor, in his conclusions (Case, p. 142), found, that as to the first, second, third, fifth and sixth counts, that the defendant made no false representations to the complainants mentioned in these counts, and that the defendant did not represent that the ordinances permitted the use of these lots for stores and business, and dismissed the bill of complaint as to these complainants. As to the fourth count, the learned Vice-Chancellor found that since the contract was made after the validating Act of 1928 had been passed, that the defendant had therefore, falsely represented that the property could be used for stores and business, and that these complainants were entitled to prevail.

It is defendant's contention that the conclusion of the Vice-Chancellor and the decree based thereon, so far as the first, second, third, fifth and sixth counts are concerned, is entirely justified, but that the court below erred in granting relief on the fourth count.



## ARGUMENT

### POINT ONE

**The Court below properly dismissed the bill of complaint as to the first, second, third, fifth and sixth counts, and erred in not dismissing the bill as to the fourth count.**

The court below was entirely justified in dismissing the bill of complaint as to those counts which it did dismiss, not only for the reason given by the court below in its conclusions, but for the additional reason that the evidence in this case conclusively proved that all the complainants had elected to affirm and stand on their respective contracts.

The court below in its conclusions, says (see Case, p. 145, line 35):

“Counsel for defendant contends that the payment made after the discovery of the misrepresentation, operated as an election by complainants to stand on their contract and waived the right to rescind.”

This was the defendant's contention in the court below and should have prevailed so far as the fourth count is concerned. In addition, defendant contended that the delay of one year before the bill was filed proved this election.

Complainants purchased this property for speculation. The agent who sold them the property, one Kyprie, who was called by the complainants, testified that he called the attention of complainants to the provision in the contract marked “(a)” and informed the purchasers that they would be



obliged to comply with zoning ordinances (Case, p. 106, lines 15-35). All the complainants were business men who purchased this property for speculation. They all read the contracts before they were executed. In the early part of February, 1929, they ascertained for the first time (so they claim) that the property could not be used for stores or business purposes. They immediately, in the same month, retained a New York attorney, who advised the defendant that his clients rescinded their respective contracts.

Instead of bringing an action to rescind, his clients, on his advice, continued to make payments of principal and interest on the respective mortgages, and continued to deal with the property as their own.

In May, 1929, New Jersey counsel was engaged, and nothing was heard from the New Jersey counsel until the bill was filed, in February, 1930.

Although New York counsel, in his letters, claimed that his clients rescinded, his actions in making the payments and continuing to deal with the property for one year, negatived his words. In this respect, the facts in this case are controlled by the decision in

*Faulkner v. Wassmer*, 77 N. J. Eq. 537,  
77 Atl. Rep. 341 (Court of Errors and  
Appeals).

In that case, the court held that where the defrauded party had waited four months after the discovery of the fraud, without taking any action for the rescission of the agreement and for the return of moneys paid for the purchase price of the lands in question, that that was conclusive evidence of an election to be bound by the contract.



Ours is a case *a fortiori*. In our case, not only did the complainants wait a year before bringing suit, but for three months after the discovery of fraud, continued to make payments of principal and interest on the purchase money mortgages.

See also

*Dennis v. Jones*, 44 N. J. Eq. 513.

The learned Vice-Chancellor, in his conclusions, takes the position that if there were any evidence that the delay had been prejudicial to the defendant, he would have dismissed the fourth count, on the ground of laches, and further says that election or waiver is a matter of intention, and since complainants, through their attorney, communicated to the defendant that they rescinded, although they continued to make payments thereafter, this was not an abandonment of that intention, because New York counsel was not entirely sure of his action for rescission, and hence, the delay was justified.

As to the matter of laches, we respectfully contend that that doctrine has no place in this case. As was said by Mr. Justice GARRISON, in speaking for this court in *Faulkner v. Wassmer*, *supra*:

*"We do not, however, agree that such election was still open to her four months later, when the present bill of complaint was filed declaring for the first time her election to rescind. At this time, viz., November 28, 1908, her right to elect, which arose on or about July 10, 1908, no longer existed, not upon the doctrine of laches, discussed in the conclusions filed in the court below, but upon the ground that the lapse of such a length of time under the circumstances afforded plenary proof of an election by her not to rescind, to which conclusive effect should have been given."*



“The learned Vice Chancellor was in error in testing the complainant’s right to elect solely by the doctrine of laches and notably so in conceiving that the decision of this court in *Dennis v. Jones*, 44 N. J. Eq. 513, 14 Atl. 913, 6 Am. St. Rep. 899, turned upon that doctrine which in point of fact was not even mentioned in the opinion of Chancellor McGill in this court. *Dennis v. Jones* was decided, not upon the quasi estoppel that is involved in the doctrine of laches, but upon a totally different ground, viz., that of conduct evidence.

“Authorities cited by Chancellor McGill had settled the law ‘*that the defrauded party to a contract has but one election to rescind, that he must exercise that election with reasonable promptitude after the discovery of the fraud, and that when once he elects he must abide by his decision.*’ Other cases cited in the opinion had held that ‘delay in the rescission of the contract is evidence of a waiver of the fraud and an election to treat the contract as valid.’ The approval and adoption of both of these lines of decision by this court resulted in *Dennis v. Jones* in our holding, ‘that, after the appellants had knowledge of all the substantial features of the alleged fraud and were fully aware of the deceit which had been practiced upon them, they so acted as to afford plenary evidence of an election to abide by their contract,’ and that ‘Their election thus made was irrevocable.’

“It is this rule, and not the doctrine of laches, that *Dennis v. Jones* lays down and illustrates.” (Italics ours.)

As to the proposition, advanced by the learned Vice-Chancellor, that the complainants had not abandoned their intention to rescind by the making of payments, and the delay of one year before taking action, we respectfully contend that the



*action* of complainants spoke louder than their words. The complainants could not blow hot and cold. Suppose the defendant had accepted the tender of rescission which the complainants' attorney made, the complainants, on the other hand, could then have said:

“No, we have not rescinded and as proof thereof, we have continued to live up to our agreement and have made additional payments to you which you have accepted,”

and defendant would not have been in a position to know whether it actually could deal with the property or not. Besides, the long delay of one year for the filing of the bill was certainly not justified, nor is it at all consistent with the notion that complainants, in fact, wanted rescission. They wanted to continue their speculation.

New Jersey counsel, testifying for the complainants, said that he took an extended trip to Europe, and upon his return took up more pressing matters before filing the bill in this case. He was the agent of the complainants, and surely, this would not vindicate his clients' delay in bringing their action.

The party defrauded must promptly bring his suit, otherwise *without more*, he will be presumed to have elected to abide by the contract.

*Eibel v. Von Fell*, 55 N. J. Eq. 670;

*Snyder v. Czerminski*, 108 N. J. Eq. 113;

154 Atl. Rep. 199;

in which latter case, Vice-Chancellor Backes observed that:

“Even an infant rejects the sour nursing bottle.”



See also:

*Maioran v. Calabrese*, 100 N. J. Eq. 315;  
135 Atl. Rep. 69 (Court of Errors and  
Appeals).

A case strikingly similar in its facts to this one,  
in which this doctrine was applied, is

*Mortgage & Investment Co. of New Jer-  
sey v. Romel Realty Co.*, 106 Eq. 185;  
150 Atl. Rep. 424,

in which Mr. Justice PARKER, speaking for this  
court, says:

“The law is, of course, settled that a right  
to rescind for fraud or misrepresentation  
must be exercised promptly after discovery  
of the facts, and that delay, and particularly  
*the making of a payment after such discov-  
ery*, are important evidence of an intent not  
to rescind, but to abide by the contract.”  
(Italics ours.)

The court below, should therefore, upon the  
ground that the complainants in the fourth count  
had elected to be bound by the agreement, have  
dismissed the bill of complaint as to this count.

## POINT TWO

**The complainants failed to prove that the  
defendant had made any false or fraudulent  
representations.**

It is our contention that the court below was en-  
tirely justified upon the facts in this case in com-  
ing to its conclusion as to counts first, second,  
third, fifth and sixth.



At the time that these various contracts were made, zoning ordinances which prohibited the use of property for stores or business, were void and of no effect, and our courts consistently granted writs of mandamus to compel municipal authorities to issue building permits. What subsequently transpired, by reason of the constitutional amendment, the Enabling Act and the November, 1929, Ordinance of the Township of Teaneck, did not make the defendant guilty of any fraud so far as representations made during the middle part of 1927 were concerned, and the court below so held.

A case directly in point is the case of *Mortgage & Investment Co. of New Jersey v. Romel Realty Co.*, cited *supra*. This case is almost identical with the case at bar in its facts, and presumably, it was this case which motivated the learned Vice-Chancellor in reaching the conclusions which he did.

The attention of all of the complainants was called to the provision in the contract marked "(a)," which deals with zoning ordinances. (See testimony of Kyprie, Case, p. 106, lines 10-35, and also Case, p. 111, lines 25-40.)

"A. No; I always closed the deals myself.

"Q. Was any mention made of that clause in that contract? A. I had in the presence of Mr. Aghnides read the contract, including I think Mr. Christon; I can't recollect. The first deal we closed we had a discussion about the clause.

"Q. What was said? A. I said: 'We can't stop the city from putting in ordinances which you will have to conform to.'

"Q. Also: 'Said lands may, however, be used for stores, dwellings, or both, for the conduct therein of retail or wholesale business, not in violation of the aforesaid provi-



sion.' A. That is the basis on which I sold the property as business.

"Q. As I understand it, you spoke of the zoning ordinance and said of course you couldn't do anything? A. Yes, they have power to put in rules and regulations."

This witness was called by the *complainants*.

One Billings, who purchased a corner plot for business purposes from the defendant, for \$22,000, which plot was immediately contiguous to the property of all of the complainants and part of the same block, succeeded, notwithstanding the ordinance, in obtaining from the municipal authorities, permission to erect a business property thereon (see Case, p. 113, lines 10-40, p. 114, lines 1-40).

Complainants did nothing to ascertain what their rights were and did nothing to attempt to obtain a permit for the erection of stores or business, and there is no proof that they would not have obtained it, had they applied to the Municipal authorities, the same as Billings had done to obtain his permit.

The court below was therefore entirely justified in dismissing that part of the bill of complaint which it did dismiss, because there was no proof that the defendant had made any fraudulent or false representations, as to these respective counts.

In conclusion, it is respectfully submitted that the court below was justified in dismissing the first, second, third, fifth and sixth counts of the Bill upon the ground advanced by the court, namely, that the complainants had not proved any false or fraudulent representations made by the defendant (*Mortgage & Investment Co. of*



*New Jersey v. Romel Realty Co.*, cited *supra*), and upon the additional theory that the complainants had elected, notwithstanding any misrepresentations, to be bound by the agreements, and were therefore so bound; and as to the fourth count, it is respectfully submitted, that the court below should have dismissed this portion of the bill on the ground that the complainants, by their conduct, evidenced a clear intention of abiding by the contract and being bound thereby.

### POINT THREE

**It is respectfully submitted that the decree of the Court of Chancery should be affirmed as to the first, second, third, fifth and sixth counts and reversed as to the fourth count.**

Respectfully submitted,

GROSS & GROSS,  
*Solicitors of Defendant-Respondent  
and Cross-Appellant.*

BENJAMIN GROSS,  
*Of Counsel.*



