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BILL TO FORECLOSE.

Filed May 3, 1930.

In Chancery of New Jersey

To the Honorable EDWIN ROBERT WALKER 10
Chancellor of the State of New Jersey:

The complainant Frank R. Smith of the City of East Orange in the County of Essex and State of New Jersey respectfully show that:

1 On the 8th day of April, 1927, Colonial Woodworking Co. Inc., a corporation, being indebted to Julius Joachimsthal in the sum of Fourteen Thousand (\$14,000.00) Dollars, executed to Julius Joachimsthal a bond of that date to secure that sum, payable in three years from the date thereof with interest at the rate of six per centum per annum, payable semi-annually from the date of the bond. 20

2 To secure payment of the bond, said Colonial Woodworking Co. Inc., a corporation, executed to said Julius Joachimsthal a mortgage of even date with the bond; and thereby conveyed to Julius Joachimsthal in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage, having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon was recorded in the office of the Register for the County of Essex in Book R 60 of Mortgages, page 294 on April 27, 1927. 30

Bill to Foreclose.

3 The mortgaged premises are described as follows:

10 ALL that certain tract or parcel of land and premises, hereinafter described, situate, lying, and being in the Town of Irvington in the County of Essex, and State of New Jersey.

20 BEGINNING at a point in the Southeasterly line of right of way of Lehigh Valley Railroad which point is distant Northeasterly three hundred seventy-three and ninety-one one-hundredths (373.91) feet from the present line of Chancellor Avenue and three hundred eighty-seven and sixteen one-hundredths (387.16) feet from the old line of Chancellor Avenue; running thence along the said Lehigh Valley Railroad property North
30 forty-four (44) degrees twenty-one (21) minutes East one hundred (100) feet; thence South forty-five (45) degrees thirty-nine (39) minutes East two hundred twenty-nine and forty-four one-hundredths one-hundredths (229.44) feet to the Northwesterly line of Cordier Street; thence along said line of Cordier Street South forty-two (42) degrees seven (7) minutes West one hundred (100) feet; thence North forty-five (45) degrees forty (40) minutes West two hundred
30 thirty-three and thirty-four one-hundredths (233.34) feet to the point or place of BEGINNING.

Being the same premises conveyed to the party of the first part by the party of the second part, by deed of even date herewith and which deed is to be recorded simultaneously with this mortgage.

40 4. Both bond and mortgage contained an agreement that if any installment of principal or interest should remain unpaid for 30 days after

Bill to Foreclose.

the same should fall due, then the whole principal sum, or any unpaid residue thereof, with all unpaid interest, should, at the option of the mortgagee , representatives or assigns, become immediately due.

5. The mortgage also contained an agreement that the mortgagor, its successors, heirs and assigns, would keep the buildings on the mortgaged premises insured against loss or damage by fire in a sum not less than the principal of the mortgage debt, and would assign the policy of insurance to the mortgagee , his representatives or assigns; and in default of so doing that the mortgagee , his representatives or assigns, should be entitled to effect such insurance, and the premiums paid for the same by the mortgagee , or his assigns, with interest at six per centum per annum, should be a lien on said land added to the amount of the mortgaged debt and secured by the mortgage. 10
20

6. By deed of assignment dated the 1st day of October, 1928, the said Julius Joachimsthal assigned said bond and mortgage to the Federal Trust Company (Springfield Avenue Branch), a corporation of the state of New Jersey, which assignment of mortgage was on the 2nd day of October, 1928, recorded in the Office of the Register of Essex County in Book 201 of Assignments of Mortgages for said county on page 570. 30

7. On the 29th day of April, 1930, said Federal Trust Company (Springfield Avenue Branch), a corporation, assigned all its interest in said bond and mortgage to the complainant, Frank R. Smith, which assignment is in the complainant's possession ready to be produced. 40

Bill to Foreclose.

8. In the assignment of said bond and mortgage to the Federal Trust Company (Springfield Avenue Branch), a corporation, above set forth it was provided that the assignment was made as security for loans made to the said Julius Joachimsthal by the said Federal Trust Company
10 (Springfield Avenue Branch), a corporation, and by reason of said assignment the said Julius Joachimsthal claims or may claim to have some interest in the mortgage held by the complainant and in the premises described above.

Any interest which the said Julius Joachimsthal has or may have in said premises or in the mortgage held by the complainant sought to be foreclosed is subject to lien and claim of the
20 complainant herein.

9. On the 4th day of January, 1928, said Colonial Woodworking Co. Inc., a corporation, mortgaged said premises to Beck Brown Realty Co. Inc., a corporation of the state of New York, for \$30,000.00, which mortgage was on the 5th day of January, 1928, recorded in the Office of the Register of the County of Essex in Book W 62 of Mortgages for said county, on page 282.

30 Any interest which the said Beck Brown Realty Co. Inc., a corporation, has or may have in said premises is subject to the lien of complainant's mortgage.

10. On the 24th day of September, 1929, one Angelo M. Ruggiero recovered a judgment in the Essex County Circuit Court against the said Colonial Woodworking Co. Inc., a corporation in the sum of \$2,498.42, together with costs, which judgment is filed in the office of the Clerk of the County of Essex in Book 108 of Circuit Court
40 judgments on page 359.

Bill to Foreclose.

Any interest which the said Angelo M. Ruggiero may have in said mortgaged premises is subject to the lien of complainant's mortgage.

11. The said Colonial Woodworking Co. Inc., a corporation has always been in possession of the mortgaged premises.

10

12. The whole amount of the principal, with interest from the 4th day of October, 1929 is due upon complainant's bond and mortgage.

Complainant is without adequate remedy in the courts of law, and therefore pray

1. That Colonial Woodworking Co. Inc., a corporation, Julius Joachimsthal, Beck Brown Realty Co. Inc., a corporation, and Angelo M. Ruggiero who are the defendants to this suit, may answer this bill of complaint without oath, and each statement therein made:

20

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

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

30

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

5. That a writ of subpoena may issue, commanding said defendants to answer this bill of

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Bill to Foreclose.

complaint and to abide by such decree as this Court may make in the premises.

ROSSBACH & CRUMMY,
Solicitor for Complainant.

10 A. J. ROSSBACH,
Of Counsel.

IN CHANCERY OF NEW JERSEY.

Between

Frank R. Smith,

Complainant,

and

20 Colonial Woodworking Co. Inc., a corporation, et als.,

Defendants.

BILL TO FORECLOSE.

Rossbach & Crummy,
763 Broad St., Newark, N. J., Solicitors
of Complainant.

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DEMAND FOR COPIES OF DOCUMENTS.

Filed June 6, 1930.

IN CHANCERY OF NEW JERSEY.

Between

FRANK R. SMITH,
Complainant,
and
 COLONIAL WOODWORKING Co.
 INC., a corporation, *et als.,*
Defendants.

On Bill, &c.
Demand for
Copies of
Documents.

10

To Rossbach & Crummy, Esquires, solicitors of
 the complainant, Frank R. Smith:

20

SIRS:

We hereby demand that you serve upon us
 within five days after service of this demand
 upon you, a copy of each of the instruments re-
 ferred to in paragraphs six and seven, respec-
 tively, of your bill of complaint, namely, the
 assignment of mortgage from Julius Joachims-
 thal to Federal Trust Company (Springfield Ave-
 nue Branch) and the assignment of mortgage
 from Federal Trust Company (Springfield Ave-
 nue Branch) to the complainant, Frank R. Smith,
 to which instruments reference is made in your
 bill of complaint herein, but which are not an-
 nexed thereto, or recited verbatim therein.

30

ZUCKER & GOLDBERG,
 Solicitors of the Defendant, Colonial
 Woodworking Co. Inc.

40

Demand for Copies of Documents.

Service of a true copy of the within instrument is hereby acknowledged this 3rd day of June 1930.

ROSSBACH & CRUMMY,
Solicitors for Complainant.

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*Assignment of Mortgage
Joachimsthal to Federal Trust Co.*

KNOW ALL MEN BY THESE PRESENTS: THAT I, Julius Joachimsthal of the City of Newark in the County of Essex and State of New Jersey, party of the First Part, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration lawful money of the United States of America, to me in hand paid by Federal Trust Company (Springfield Avenue Branch) a corporation of the State of New Jersey, and having its principal office in the City of Newark, in the County of Essex and State of New Jersey, party of the Second Part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the Second Part, its Successors and Assigns, a certain Indenture of Mortgage bearing date the Eighth day of April One Thousand Nine Hundred and Twenty-seven made by Colonial Woodworking Co., Inc., a corporation, on lands in the Town of Irvington in the County of Essex and State of New Jersey, to secure the payment of the sum of Fourteen Thousand Dollars (\$14,000.00) which mortgage is recorded in the office of the Register of the County of Essex and State of New Jersey, in Book R 60 of Mortgages, pages 294-296.

TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD, the same unto the said party of the Second Part, its Successors and Assigns forever as collateral security for any and all notes, given or to be given by the said Julius Joachimsthal to the said party of the second part; also all other pres-

*Assignment of Mortgage
Joachimsthal to Federal Trust Co.*

ent or future demands, liability or liabilities of any and all kinds, of the said company against the said Julius Joachimsthal direct, indirect or contingent, individual or firm, joint or several, primary or secondary, matured or unmatured, due or not due, including any indorsement made by him, with interest on said sum or sums as may be advanced or become owing as aforesaid, then these presents shall be void, with the power to receive and collect the proceeds subject only to the proviso in the said Indenture of Mortgage mentioned: AND I do hereby make, constitute, and appoint the said party of the Second Part my true and lawful attorney, irrevocable, in my name, or otherwise, but at its proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made. AND I do hereby covenant, promise and agree, to and with the said party of the Second Part, that there is now due and owing upon the said Bond and Mortgage the sum of Fourteen Thousand Dollars (\$14,000.00).

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal the First day of October in the year of Our Lord One Thousand Nine Hundred and Twenty-eight.

JULIUS JOACHIMSTHAL (L. S.)

Signed, Sealed and Delivered
in the Presence of

A. J. ROSSBACH.

*Assignment of Mortgage
Joachimsthal to Federal Trust Co.*

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

10 ON this 1st day of October in the year of our Lord One Thousand Nine Hundred and Twenty-eight before me, the subscriber, A Master in Chancery of New Jersey personally appeared Julius Joachimsthal who, I am satisfied, is the assignor in the within Deed of Assignment named: and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed:

20 ADAM J. ROSSBACH,
A Master in Chancery of New Jersey.

ASSIGNMENT OF MORTGAGE.

Julius Joachimsthal

to

Federal Trust Company (Springfield Avenue Branch), a corporation,

Dated, October 1, 1928.

30 Received in the Office of Register of the County of Essex, N. J., on the 2nd day of October, A. D. 1928, at 10:04 o'clock in the forenoon, and Recorded in Book 201 of Assignments of Mortgages for said County, on pages 570-571.

HOWARD S. DODD,
Register.

Rossbach & Crummy, 763 Broad street,
Newark, N. J.

40 Received Register's Office Oct. 2, 1928, 10:04 A. M., Essex County, Newark, N. J.

*Assignment of Mortgage
Federal Trust Co. to Smith.*

KNOW ALL MEN BY THESE PRESENTS.

THAT Federal Trust Company (Springfield Avenue Branch) a corporation of the State of New Jersey, and having its principal office in the City of Newark, in the County of Essex and State of New Jersey, party of the First Part, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration lawful money of the United States of America, to it in hand paid by Frank R. Smith of the City of East Orange in the County of Essex and the State of New Jersey, party of the Second Part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the Second Part, his Executors, Administrators or Assigns, a certain Indenture of Mortgage bearing date the Eighth day of April One Thousand Nine Hundred and Twenty-seven, made by Colonial Woodworking Co., Inc., a corporation, on lands in the Town of Irvington in the County of Essex and State of New Jersey, to secure the payment of the sum of Fourteen Thousand Dollars (\$14,000.00) which mortgage is recorded in the office of the Register of the County of Essex and State of New Jersey, in Book R 60 of Mortgages, pages 294-296.

TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD, the same unto the said party of the Second Part, his Executors, Administrators and Assigns forever subject only to the proviso in the said Indenture of Mortgage mentioned: AND the said

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*Assignment of Mortgage
Federal Trust Co. to Smith.*

party of the First Part does hereby make, constitute, and appoint the said party of the Second Part its true and lawful attorney, irrevocable, in its name, or otherwise, but at the proper costs and charges of the said party of the Second
10 Part, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as it might or could do if these presents were not made:

IN WITNESS WHEREOF, the said party of the First Part have caused its common seal to be hereunto affixed and duly attested and these presents to be signed by its Vice-President this
20 Twenty-ninth day of April, A. D. 1930.

FEDERAL TRUST COMPANY,
(Springfield Avenue Branch)

By EDWARD E. GNICHTEL,
Vice-President.

Attest:

C. W. SCHUMACHER,
Asst V. Pres.

30

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. }SS.:

BE IT REMEMBERED, That on this 30th day of April in the year of our Lord, One Thousand Nine Hundred and Thirty before me, the subscriber A Notary Public of New Jersey personally appeared Carl W. Schumacher who, being by me duly sworn, doth depose and make proof
40 to my satisfaction, that he is the Ass't Vice-President of the corporation within named, that

*Assignment of Mortgage
Federal Trust Co. to Smith.*

he well knows the corporate seal of said corporation, and that the seal affixed to the within agreement is the common seal of said corporation, and that the same was thereto affixed and said Deed of Assignment signed and delivered by Edward E. Gnichtel, who was at the date and execution thereof the President of said corporation, as and for the voluntary act and deed of said corporation, and that deponent signed same as subscribing witness. 10

CARL W. SCHUMACHER.

Subscribed and Sworn to before me
on the day and year aforesaid.

ALEXANDER N. CIAVARRA, 20
Notary Public of N. J. (L. S.)

ASSIGNMENT OF MORTGAGE.

Federal Trust Company (Springfield
Avenue Branch), a corporation,

to

Frank R. Smith. 30

Dated, April 29, 1930.
Rossbach & Crummy, 763 Broad street,
Newark, N. J.

Service of the within Copies of Documents is
hereby acknowledged this 10th day of June, 1930.

ZUCKER & GOLDBERG,
Solicitors for Defendant, Colonial Wood-
working Co. Inc., a Corporation. 40

**AMENDED ANSWER AND COUNTER-CLAIM
OF COLONIAL WOODWORKING CO. INC.**

Filed July 18, 1930.

IN CHANCERY OF NEW JERSEY.

10

79/144.

Between

FRANK R. SMITH,
Complainant,
and
COLONIAL WOODWORKING Co.
INC., a corporation, *et als.,*
Defendants.

On Bill, &c.

*Amended
Answer and
Counter-
claim of the
Defendant,
Colonial
Woodwork-
ing Co. Inc.*

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The answer of the defendant, Colonial Woodworking Co. Inc., a corporation, and the counter-claim of Colonial Woodworking Co. Inc., against the complainant, Frank R. Smith, and the defendants, Julius Joachimsthal and Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, which last-named defendant is made a party to these proceedings by the Colonial Woodworking Co. Inc.

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This defendant, Colonial Woodworking Co. Inc., answering the bill of complaint, says that:

1. Paragraphs one to nine, inclusive, are admitted.

2. Paragraph ten is admitted, with the reservation, however, that this defendant claims that by reason of the facts set forth in the counter-claim hereinafter, the said sum of money for

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Amended Answer and Counter-claim.

which the said Angelo M. Ruggiero recovered a judgment against the Colonial Woodworking Co. Inc., was in fact the debt of Julius Joachimsthal, one of the defendants herein, and should be paid by him, and that failure of the said Julius Joachimsthal to pay said debt due and owing by him and said debt becoming due from the defendant, Colonial Woodworking Co. Inc., because of said fact, is a debt which is a proper set-off against any claim against Colonial Woodworking Co. Inc., for moneys due under the bond and mortgage set forth as due from this defendant to the complainant herein, and for greater details and explanation of said claim on the part of this defendant, this defendant begs leave to refer to the counter-claim hereinafter following.

3. Paragraph eleven is admitted. 20

4. As to paragraph twelve, this defendant admits that the matured date on the complainant's bond and mortgage has arrived, but that by reason of the facts as set forth in the counter-claim hereinafter set forth, this defendant is entitled to set-offs against the amount due from this defendant to the complainant on the aforementioned mortgage.

5. The assignment recited in paragraph six of the bill of complaint is subject to any set-offs, counter-claims or defenses which the defendant, Colonial Woodworking Co. Inc., may have against the said Julius Joachimsthal. 30

6. The assignment recited in paragraph seven of the bill of complaint is subject to any set-offs, counter-claims or defenses which the defendant, Colonial Woodworking Co. Inc., may have against the said Julius Joachimsthal. 40

Amended Answer and Counter-claim.

COUNTER-CLAIM.

By way of counter-claim against the complainant, and Julius Joachimsthal, as defendant, and Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, the defendant, Colonial Woodworking Co. Inc., says that:

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1. During the month of March, 1927, the defendant, Julius Joachimsthal and Emma Joachimsthal, his wife, were the owners of the premises described in the third paragraph of the bill of complaint.

2. During the month of March, 1927, the defendant, Colonial Woodworking Co. Inc., was the owner of the following premises:

20

A. Premises commonly known and designated as No. 231 Wainwright street, Newark, New Jersey.

B. Premises commonly known and designated as No. 244 Wainwright street, Newark, New Jersey.

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3. During March, 1927, the defendant, Colonial Woodworking Co. Inc., entered into an agreement with the defendant, Julius Joachimsthal and his wife, Emma Joachimsthal, to purchase from them the premises described in paragraph three of the bill of complaint, and agreed to pay to the said Julius Joachimsthal and Emma Joachimsthal, his wife, for said premises, the sum of \$20,000.00.

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4. At the same time that said agreement was made between the defendant, Julius Joachimsthal, and Emma Joachimsthal, his wife, to sell said premises to the defendant, Colonial Woodworking Co. Inc., the said Julius Joachimsthal

Amended Answer and Counter-claim.

and Emma Joachimsthal, his wife, agreed to purchase from the Colonial Woodworking Co. Inc., the two parcels of lands and premises, which were owned by the defendant, Colonial Woodworking Co. Inc., and known as No. 231 Wainwright street, Newark, New Jersey, and No. 244 Wainwright street, Newark, New Jersey, and they agreed to pay to the Colonial Woodworking Co. Inc., for said premises, the sum of \$30,000.00. 10

5. The aforementioned agreements were reduced to writing, signed by the parties, and a copy of the same is annexed hereto and made a part hereof, and marked Schedule A.

6. The defendant, Julius Joachimsthal, and Emma Joachimsthal, his wife, agreed to pay to the Colonial Woodworking Co. Inc., the aforesaid sum of \$30,000, as follows: 20

By having applied against the purchase price for the said premises at Nos. 231 and 244 Wainwright street, Newark, New Jersey, the encumbrances which were against said properties, to wit:

A first mortgage of \$10,000, and a second mortgage of \$2,500.00, against premises 231 Wainwright street, Newark, New Jersey.

A first mortgage of \$12,000, and a second mortgage of \$2,500.00, against premises 244 Wainwright street, Newark, New Jersey. 30

And after receiving credit for said sums and deducting the amount due upon said encumbrances from the said sum of \$30,000, the balance then due for the sale of the said premises at Nos. 231 and 244 Wainwright street, Newark, New Jersey, from the said Julius Joachimsthal and Emma Joachimsthal, his wife, to Colonial 40

Amended Answer and Counter-claim.

Woodworking Co. Inc., shall be applied against the purchase price of the premises described in paragraph three of the bill of complaint from the said defendants, Julius Joachimsthal and Emma Joachimsthal, his wife, as more fully set forth in said contract annexed hereto and marked
10 Schedule A.

7. As part and parcel of said contract, and as a result thereof, and in consummation of the contract referred to herein, the mortgage being foreclosed by the complainant was executed by the defendant, Colonial Woodworking Co. Inc., to the said Julius Joachimsthal.

8. On the 8th day of April, 1927, the defendant, Colonial Woodworking Co. Inc., in accordance with the terms of said agreement herein-
20 before referred to, executed a warranty deed to Julius Joachimsthal, the defendant herein, conveying to the said Julius Joachimsthal, the said two tracts of land known Nos. 231 and 244 Wainwright street, Newark, New Jersey, and as provided in the agreement aforesaid, allowed to the said Julius Joachimsthal as a payment on account of the \$30,000 which he agreed to pay to the defendant, Colonial Woodworking Co.
30 Inc., for the conveyance of the premises known as Nos. 244 and 231 Wainwright street, Newark, New Jersey, the amount due on the respective mortgages which affected said premises, and which are referred to in said agreement aforesaid, and which amounts were as follows:

Premises 231 Wainwright street, Newark, New Jersey, the sum of \$10,000 due to the West End Building and Loan Association of the City of Newark, and the sum of \$2,400 due to one Harry
40 Kaplan.

Amended Answer and Counter-claim.

Premises 244 Wainwright street, Newark, New Jersey, the sum of \$12,000 due to the Manhattan Building and Loan Association of the City of Newark, and the sum of \$2,307.14 due to Angelo Ruggiero.

And which express mortgages are recited in said deed, a copy of which deed is annexed hereto and marked Schedule B. 10

9. The said deed marked Schedule B was on April 25, 1927, delivered to the defendant, Julius Joachimsthal, and as recited by said deed, was recorded on April 27, 1927, in Book E-76 of Deeds for Essex County, on page 489.

10. The said Julius Joachimsthal entered into possession of the said premises mentioned in said deed, collected the rents, issues and profits therefrom, and at all times thereafter, peaceably and quietly, had, held, used, occupied, possessed and enjoyed said premises, without any let, suit, trouble, molestation, eviction or disturbance on the part of the Colonial Woodworking Co. Inc. 20

11. Angelo Ruggiero held a second mortgage on the premises known as No. 244 Wainwright street, Newark, New Jersey, which second mortgage was executed together with a bond, by the defendant, Colonial Woodworking Co. Inc., and a credit for the amount due upon said mortgage was given to the defendant, Julius Joachimsthal, as hereinbefore recited, in lieu of his payment of said sum when he purchased premises covered by said mortgage. 30

12. The said Julius Joachimsthal, and his successors to the title to the premises, which are covered by said mortgage, failed to comply with the terms of said mortgage, and the mortgagee 40

Amended Answer and Counter-claim.

10 instituted foreclosure proceedings in this Court by reason of which proceedings, the Sheriff of the County of Essex at a sale held by virtue of the writ of fieri facias directed to him by this Honorable Court, sold the premises covered by said mortgage, and deficiency resulted from said sale, so that the said Angelo Ruggiero did not receive the amount due him on said mortgage.

20 13. The said Angelo Ruggiero thereupon filed suit for the deficiency on his said mortgage, and the bond which accompanied the same, against the defendant, Colonial Woodworking Co. Inc., in the Essex County Circuit Court, and did on September 24, 1929, recover and enter a judgment against Colonial Woodworking Co. Inc., for the sum of \$2,498.42, which judgment is filed in Book 108 of Circuit Court Judgments for Essex County, page 359, and which judgment is now a lien upon the real estate of the defendant, Colonial Woodworking Co. Inc. and which judgment the Colonial Woodworking Co. Inc., is required to pay.

30 14. The said Harry Kaplan held a second mortgage on the premises known as No. 231 Wainwright street, Newark, New Jersey, in the sum of \$2,400.00, which second mortgage was executed together with the bond, by the defendant, Colonial Woodworking Co. Inc., and a credit for the amount due upon said mortgage was given to the defendant, Julius Joachimsthal, as hereinbefore recited, and which mortgage, by mesne assignments, was assigned to the Southern Lumber Company, a corporation of New Jersey.

40 15. The said premises described in the said mortgage held by Harry Kaplan, formerly, was

Amended Answer and Counter-claim.

subrogated to a first mortgage in the sum of \$10,000 held by the West End Building and Loan Association of the City of Newark.

16. The West End Building and Loan Association instituted foreclosure proceedings on its said mortgage, and by reason thereof, the premises covered by said mortgage, were sold by the Sheriff of the County of Essex, and no sum was realized over and above the amount due on said mortgage of the West End Building and Loan Association. 10

17. The Southern Lumber Company, being the holder of the mortgage and bond, which were executed by this defendant, then threatened this defendant with suit unless this defendant paid to the Southern Lumber Company, the amount due on said bond and mortgage, and this defendant, having no defense to the payment of the same, and being in duty bound to pay said mortgage, did pay and satisfy the same, and did pay the sum of \$2,400.00 with interest to the said Southern Lumber Company. 20

18. By reason of the failure of the said defendant, Julius Joachimsthal, to pay the afore-said two mortgages which this defendant was required to pay, this defendant was called upon to pay out large sums of money for the purpose of defending itself against the said suit of Angelo Ruggiero and for arranging for proper releases upon its making payment of the amount of moneys which it was required to pay. 30

19. This defendant called upon the said Julius Joachimsthal to pay the amounts which it was required to pay, but the said Julius Joachimsthal refused to pay same. 40

Amended Answer and Counter-claim.

10 20. When the said Julius Joachimsthal purchased the premises known as Nos. 231 and 244 Wainwright street, Newark, New Jersey, from this defendant, and was allowed as against his agreed purchase price for the same, the amount due on the mortgaged encumbrances affecting said premises, and accepted a conveyance of the same with such allowances as recited in the deed marked Schedule B annexed hereto, he was charged with the said mortgage debt and assumed the payment of the debts, effectually as if he had executed the mortgage.

20 21. The said Julius Joachimsthal, in purchasing the premises known as Nos. 231 and 244 Wainwright street, Newark, New Jersey, and in agreeing to pay for the same the sum of \$30,000 and receiving a reduction in the said price for the amount due on the mortgage encumbrances affecting said premises became liable for the amount of said encumbrances upon which failure to pay same when said debt matured.

30 22. By reason of the aforesaid facts, this defendant is entitled to be reimbursed for the amount which it was required to pay on the mortgages, allowances for which were given to the said Julius Joachimsthal when he purchased the aforementioned premises, and that because of his failure to pay same and because of the fact that this defendant was required to pay same, this defendant is entitled to receive a credit for said sum against the amount due the complainant herein on the mortgage recited in the bill of complaint held by the complainant.

40 23. The defendant, Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, when it took an assignment of the mortgage

Amended Answer and Counter-claim.

therein recited, took said mortgage subject to any defenses which the grantor therein named had or may have against the mortgagee therein named, and this defendant is advised and verily believes same to be true, that the complainant herein holds said assignment of mortgage in trust and for the benefit of Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, and therefore this defendant expressly alleges that the Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, is the true and lawful owner of the said assignment, and the bond and mortgage upon which this suit is brought, and that any claim to any portion of the money due under said bond and mortgage held by the complainant, is subject to the claim of this defendant as against the said Julius Joachimsthal.

24. This defendant was and still is ready, willing and able, upon proper allowances and deductions as it is by law entitled to by reason of the facts alleged in this counter-claim, to pay any balance justly due on account of the within mortgage, less such amount as shall be ascertained to be due this defendant in good conscience and in accordance with equity.

25. All of the defendants in this suit, as well as the Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, at all times knew of the existence of this counter-claim of this defendant, and this defendant was at all times ready, willing and able to, and offered to pay the difference between the amount due on the mortgage and its set-off and counter-claim, but the defendants have refused such offer.

Amended Answer and Counter-claim.

This defendant, Colonial Woodworking Co. Inc., therefore prays:

10 1. That the complainant herein, and the defendant, Julius Joachimsthal, as well as the Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, which is hereby impleaded, may answer this counter-claim and each statement herein made.

20 2. That the defendants may be decreed to pay or make a proper allowance to this defendant for the amounts found due, with interest and costs, by a short day to be appointed by this Court, and that in default of such payment, that a decree may be entered, ordering, adjudging and decreeing, that such moneys, so found to be due this defendant, may be applied for and used towards the reduction of the mortgage under foreclosure.

30 3. That a writ of subpoena may issue, commanding the defendants, Julius Joachimsthal and Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, to answer this amended answer and counter-claim, and to abide by such decree as this Court may make in the premises.

40 4. That upon ascertaining the amount due this complainant and the amount due this defendant, Colonial Woodworking Co. Inc., by reason of this counter-claim and such accounting, the same may be credited on said mortgage debt, and if the amount so found due this defendant shall exceed the amount of such mortgage debt, then, that the complainant, and the defendants, Julius Joachimsthal and Federal Trust Company (Springfield Avenue Branch), Newark, New Jer-

Amended Answer and Counter-claim
Schedule A.

sey, may be decreed to pay to this defendant the excess, including costs and expenses.

5. That this defendant shall and may have such other and further relief as shall be just and equitable in the premises, and agreeable to equity. 10

ZUCKER & GOLDBERG,
Solicitors for Defendant, Colonial
Woodworking Co. Inc.

7/11/30

“SCHEDULE A.”

THIS INDENTURE 20

Made the

day of March, in the year of our Lord One Thousand Nine Hundred and Twenty seven

BETWEEN JULIUS JOACHIMSTHAL and EMMA JOACHIMSTHAL, his wife parties of the first part; AND COLONIAL WOODWORKING CO. INC.

party of the second part:

WITNESSETH, as follows: The parties of the first part, in consideration of one Dollar, paid 30 by the party of the second part, the receipt of which by the parties of the first part is hereby acknowledged, and also in consideration of the conveyance by the party of the second part of the real property hereinafter mentioned, hereby agree to grant and convey to the party of the second part, at a valuation for the purpose of this contract of

TWENTY THOUSAND (\$20,000.00) Dollars 40

*Amended Answer and Counter-claim
Schedule A.*

ALL that certain tract, lot, or parcel of land and premises hereinafter particularly described situate, lying and being in the City of Irvington, County of Essex, and State of New Jersey:

10 Beginning at a point in the Southeasterly line of Right of Way of Lehigh Valley Railroad which point is distant Northeasterly 375.91 feet from the present line of Chancellor Avenue and 387.16 feet from the old line of Chancellor Avenue; running thence along the said Lehigh Valley Railroad property north 44 degrees 21 minutes East 100 feet; thence south 45 degrees 39 minutes east 229.44 feet to the northwesterly line of Cordier Street; thence along said line of
20 Cordier Street south 42 degrees 07 minutes west 100 feet; thence north 45 degrees 40 minutes West 233.34 feet to the point or place of Beginning.

Subject to an encroachment of the eaves of a sheet metal building on the adjoining lot, the encroachment being 0.25 and 0.27 respectively, as more fully shown by a survey made by Edwin R. Halsey, Surveyor, dated March 2nd, 1927.

30 AND the party of the second part, in consideration of One Dollar paid by the party of the first part, the receipt of which by the party of the second part is hereby acknowledged and also in consideration of the conveyance by the parties of the first part of the real property hereinbefore mentioned, agrees to grant and convey to the parties of the first part, at a valuation for the purposes of this contract of

THIRTY THOUSAND (\$30,000.00) Dollars

*Amended Answer and Counter-claim
Schedule A.*

ALL—

Being premises commonly known and designated as a two family house at 231 Wainright Street, and a two and a half family house, frame at premises 244 Wainright Street, in the City of Newark, County of Essex, and State of New Jersey:—both premises being constructed on lots which are approximately 40 x 100 feet. 10

The party of the second part represents as follows: that the rental income from premises 231 Wainright St., Newark, N. J. is \$125.00 a month and from 244 Wainright Street, \$170.00 a month, and the party of the second part further covenants that before the exchange of deeds it will procure for the party of the first part a lease for the second and third floors and garage of premises at 244 Wainright Street for one year from the date of closing at a rental for said premises in the sum of \$105.00 said leases, however, shall contain assignable clauses. 20

Said premises which are to be conveyed by the party of the first part are to be conveyed subject to the following incumbrances:

Said premises which are to be conveyed by the party of the second part are to be conveyed subject to the following incumbrances: 30

- #231 Wainright St., Newark, N. J.
 - a B. & L. mtge of.....\$10,000.00
 - a second mtge two yrs. to run..... 2,500.00
- #244 Wainright St., Newark, N. J.
 - a B. & L. mtge of.....\$12,000.00
 - a second mtge. of yrs. to run..... 2,500.00

The difference between the values of the respective premises, over and above incumbrances shall be deemed for the purposes of this contract 40

*Amended Answer and Counter-claim
Schedule A.*

to be SEVENTEEN THOUSAND (\$17,000.00
Dollars in favor of the parties of the
first part, and the said party of the second part
agrees to pay the same as follows:

10 By executing a purchase mortgage in
that sum payable as follows: \$17,000.00
\$15,000.00 in three years. The differ-
ence between the amount of the mort-
gage and the \$15,000.00 mentioned would
be further secured by a note, which shall
be payable within three months from
date.

20 The back shares shall be ascertained and
with-drawal value allowed to the party of the
second part and deducted from the amount of
the mortgage *the purpose and intent being that
the true amount, when ascertained, shall be the
first amount of the mortgage, \$15,000.00,* of
which is to remain for a period of three years,
and the balance to be secured by a note and
payable in three months.

30 Each of the respective parties represent that
all assessments and existing improvements, con-
firmed or unconfirmed, either have been paid or
will be paid before the closing of title.

40 Each of the parties to these presents hereby
agrees to convey the property above described,
as *sold* by that party, free from all incum-
brances, except as above specified, and to exe-
cute, acknowledge and deliver or cause to be
executed, acknowledged, and delivered to the
other party, or to the assigns of the other party
(the deed to be drawn in each case at the cost
of the vendor), a proper warranty deed con-
taining full covenants, duly executed and ac-

*Amended Answer and Counter-claim
Schedule A.*

knowledged to convey and assure to the grantees and absolute fee of said premises.

Said deeds shall be delivered and exchanged on Monday the 21st day of March at Ten o'clock A. M., at the office of Samuel S. Ferster, No. 800 Broad St., in the City of Newark, New Jersey. 10

Each of the parties hereto assumes the risk of loss or damages by fire prior to the completion of this contract on the premises owned by them respectively. The rents of the said premises, insurance premiums and interest on mortgage, if any, shall be adjusted, apportioned and allowed up to the day of taking title.

If there be water meters on the premises, *the respective sellers* shall furnish readings to dates not more than thirty days prior to the time herein set forth for closing title and the unfixed meter charges for the intervening time shall be apportioned on the basis of such last readings. 20

All personal property appurtenant to or used in the operation of the said premises is represented to be owned by the *respective sellers* and is included in this exchange.

This contract covers all right, title and interest of *the respective sellers*, of, in and to any lands lying in the bed of the street, road or avenue, opened or proposed, in front of or adjoining the premises to be conveyed to the centre line thereof, or all right, title and interest of *the respective sellers* in and to any awards made or to be made in lieu thereof, and *the sellers* will execute and deliver to the purchasers, on closing of title or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of such awards. 30 40

*Amended Answer and Counter-claim
Schedule A.*

AND IT IS UNDERSTOOD that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

10 IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

JULIUS JOACHIMSTHAL (L. S.)
EMMA JOACHIMSTHAL (L. S.)
(Seal)

COLONIAL WOODWORKING CO. INC.
(Seal)

CARL GOLDBERG
PRESIDENT.

20 ATTEST:

ABE W. HOLDER,
SECRETARY.

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

30 BE IT REMEMBERED, that on this day of March, in the year of our Lord One Thousand Nine Hundred and Twenty seven before me, the subscriber, personally appeared Abe W. Holder, who, being by me duly sworn on his oath, says that he is the Secretary of the Colonial Woodworking Co. Inc. the grantor named in the within instrument; that Carl Goldberg is the President of the said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and
40 said Instrument signed and delivered by said

*Amended Answer and Counter-claim
Schedule A.*

President, as and for his voluntary act and deed, and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

ABE W. HOLDER.

10

Sworn and subscribed to before me, at Newark the date aforesaid.

SAMUEL D. GOLDBERG,
A Notary Public of N. J.

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

20

BE IT REMEMBERED, that on this day of March in the year of our Lord One Thousand Nine Hundred and Twenty-seven before me, the subscriber, an attorney at law of the State of New Jersey, personally appeared Julius Joachimsthal and Emma Joachimsthal, his wife, whom I am satisfied, are the grantors mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

30

And the said Emma Joachimsthal being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely without any fear, threats or compulsion of her said husband.

40

*Amended Answer and Counter-claim
Schedule B.*

“SCHEDULE B.”

THIS INDENTURE,

MADE the Eighth day of April, in the year of
our Lord One Thousand Nine Hundred and
10 Twenty-seven

BETWEEN COLONIAL WOODWORKING CO.
INC., a corporation of the State of New Jersey,
having its business office in the City of Newark
in the County of Essex in said State of New
Jersey party of the First Part;

AND JULIUS JOACHIMSTHAL of the City
of Newark in the County of Essex and State of
New Jersey party of the Second Part:

20 WITNESSETH, That the said party of the First
Part, for and in consideration of One Dollar
(\$1.00) and other good and valuable considera-
tion lawful money of the United States of
America, to the Corporation aforesaid well and
truly paid by the said party of the Second Part,
at or before the sealing and delivery of these
presents, the receipt whereof is hereby acknowl-
edged, and the said party of the First Part
being therewith fully satisfied, contented and
30 paid, has given, granted, bargained, *sold*, aliened,
remised, released, enfeoffed, conveyed and con-
firmed, and by these presents does give, grant,
bargain, *sell*, alien, remise, release, enfeoff, con-
vey and confirm to the said party of the Second
Part, and to his heirs and assigns, forever,

ALL those certain tracts or parcels of land and
premises, hereinafter particularly described,
situate, lying and being in the City of Newark in
the County of Essex and State of New Jersey.

*Amended Answer and Counter-claim
Schedule B.*

FIRST TRACT:

BEGINNING at a point in the Easterly line of Wainwright Street distant four hundred sixty-five feet Southerly from the corner formed by the intersection of the Easterly line of Wainwright Street with the Southerly line of Lyons Avenue; thence running South forty-seven degrees fifty-three degrees East one hundred feet; thence South forty-two degrees seven minutes West forty feet; thence North forty-seven degrees fifty-three minutes West one hundred feet to Wainwright Street; thence along the same North forty-two degrees seven minutes East forty feet to the place of BEGINNING. 10

SECOND TRACT:

BEGINNING in the Westerly line of Wainwright Street at a point therein distant three hundred twenty-four feet and fifty-seven one-hundredths of a foot Southerly from the Southerly line of Lyons Avenue; thence along the Westerly line of Wainwright Street South forty-two degrees seven minutes West thirty-five feet; thence North forty-seven degrees fifty-three minutes West one hundred feet; thence North forty-two degrees seven minutes East thirty-five feet; thence Southerly forty-seven degrees fifty-three minutes East one hundred feet to the Westerly line of Wainwright Street and the point and place of BEGINNING. 20 30

Being the two tracts of land conveyed to the party of the first part by two deeds, one recorded in Book N-75 of Deeds for Essex County, on page 78 and the other in Book K-75 on page 95.

The first tract above described is subject to a mortgage for \$12,000.00 held by Manhattan B. & L. Association recorded in M-56-326, and to a 40

*Amended Answer and Counter-claim
Schedule B.*

mortgage for \$2307.14 held by Angelo Ruggiero recorded in Book C-59 of Mortgages, on page 184. The Second tract above described is subject to a mortgage for \$10,000.00 held by the West End B. & L. Association recorded in Book V-56 of Mortgages, on page 552 and a mortgage for \$2,400.00 held by Harry Kaplan, recorded in Book I-58 on page 595.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the First Part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

To HAVE AND TO HOLD all and singular, the above mentioned and described premises, together with the appurtenances unto the said party of the Second Part, his heirs and assigns, to his own proper use, benefit and behoof forever.

AND the said party of the first part for itself, its successors or assigns does covenant, grant and agree, to and with the said party of the Second Part, his heirs and assigns, that the said party of the first part at the time of the sealing and delivery of these presents, was lawfully seized in its own right of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances

*Amended Answer and Counter-claim
Schedule B.*

and has good right, full power and lawful authority to grant, bargain, *sell* and convey the same in manner and form aforesaid.

AND that the said party of the Second Part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the First Part, its successors or assigns, or of any other person or persons lawfully claiming or to claim the same.

10

AND that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever.

20

AND ALSO, that the said party of the First Part, and its successors or assigns, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises, by, from, under or in trust for it or them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the Second Part, his heirs and assigns, make, do and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the Second Part, his heirs and assigns forever, as by the said party

30

40

*Amended Answer and Counter-claim
Schedule B.*

of the Second Part, his heirs or assigns, or his counsel learned in the law, shall be reasonably advised or required.

10 AND the said party of the first part its successors or assigns, the above described and here-
by granted and released premises, and every
part and parcel thereof, with the appurtenances,
unto the said party of the Second Part, his
heirs and assigns, against the said party of the
First Part, and its successors or assigns, and
against all and every person or persons whomso-
ever, lawfully claiming or to claim the same,
SHALL AND WILL WARRANT and by these presents
FOREVER DEFEND.

20 IN WITNESS WHEREOF, the said party of the
First Part hath caused its Corporate Seal to be
hereto affixed and attested by its Secretary,
and these presents to be signed by its
President, the day and year first above written.

COLONIAL WOODWORKING CO. INC.,

By CARL GOLDBERG,
President.

30 Signed, Sealed and Delivered
in the presence of

Attest:

ABE W. HOLDER,
Secretary.

*Amended Answer and Counter-claim
Schedule B.*

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

BE IT REMEMBERED, That on this 25th day of April, in the year of our Lord One Thousand Nine Hundred and twenty-seven personally appeared Abe W. Holder who being by me duly sworn doth depose and make proof to my satisfaction that he is the Secretary of, and well knows the Corporate Seal of Colonial Woodworking Co. Inc., the Grantor named in the foregoing Deed, that the seal thereto affixed is the proper Corporate Seal of the said Corporation, and that the same was so affixed thereto, and the said Deed signed and delivered by Carl Goldberg who was at the date and execution thereof,

President of said Corporation, in the presence of said Deponent, as the voluntary act and deed of the said Corporation, and that the said Deponent thereupon signed the same as subscribing witness.

DEED.

Colonial Woodworking Co. Inc., a corporation,

To

Julius Joachimsthal.

Dated, April 8th, 1927.

Received in the Register's office of the County of Essex, N. J., on the 27th day of April, A. D. 1927, at.....o'clock in the.....noon, and Recorded in Book E-76 of DEEDS for said County, on pages 489.

HOWARD S. DODD,
Register.

**NOTICE OF MOTION TO STRIKE OUT
AMENDED ANSWER AND COUNTER-
CLAIM.**

Filed December 10, 1930.

IN CHANCERY OF NEW JERSEY.

10

Between

FRANK R. SMITH,
Complainant,
and

COLONIAL WOODWORKING Co.,
INC., a corporation, *et als.*,
Defendants.

On Bill, &c.

*Notice of
Motion to
Strike Out
Amended An-
swer and
Counter-
claim.*

20

To Colonial Woodworking Co. Inc., a corpora-
tion, and Zucker and Goldberg, Esqs., its solici-
tors, 24 Branford Place, Newark, N. J.

Sirs:

PLEASE TAKE NOTICE, that we shall apply to the
Chancellor at the Chancery Chambers in the City
of Newark, (1060 Broad street), on Tuesday the
29th day of July, Nineteen Hundred and Thirty,
at ten o'clock in the forenoon of that day, or
as soon thereafter as counsel can be heard there-
on, for an order striking out the counter-claim
filed by the defendant, Colonial Woodworking
Co. Inc., a corporation, in the above-entitled
cause, for the following reasons:

30

1. That the counter-claim attempts to set up
an alleged claim against Julius Joachimsthal,
which, if it exists at all, is a personal claim
against Mr. Joachimsthal, and cannot be set up
in this foreclosure proceeding;

40

Notice of Motion to Strike Out.

2. That the agreement between the parties relating to the purchase and exchange of properties was contained in a contract of sale and in a deed, copies of which are hereto annexed, and these contain no covenant on the part of the vendee or grantee to pay the encumbrances;

10

3. That the agreement attempted to be set up is in direct contradiction to the terms of the agreement of sale and to the terms of the deed, copies of which are hereto annexed, and which contain no covenant on the part of the grantee that he will pay the encumbrances;

4. That there is no equity in the counter-claim.

20

AND TAKE NOTICE, that we shall further move to strike out the amended answer and counter-claim filed in the above-entitled cause by the defendant, Colonial Woodworking Co. Inc., a corporation, on the ground that it is frivolous, and that we shall further move to strike out said amended answer and counter-claim on the ground that it is sham.

Dated: July 18, 1930.

30

ROSSBACH & CRUMMY,
Solicitors for Complainant.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

40

JULIUS JOACHIMSTHAL, being duly sworn according to law, upon his oath deposes and says: That he is the mortgagee in the mortgage described and mentioned in the bill of complaint, which mortgage was subsequently assigned to the

Notice of Motion to Strike Out.

Federal Trust Company (Springfield Avenue Branch), and thence to Frank R. Smith; *that attached hereto is a true copy of the agreement and contract for sale entered into between deponent and the Colonial Wookworking Co. Inc., a corporation, and also a copy of the clause in the deed from the said Colonial Woodworking Co. Inc., to deponent, stating that the premises were sold to him subject to mortgages in the sum of \$12,500.00 and \$14,500.00; that said contract of sale and deed contained the whole and entire agreement between the parties; that there was no other agreement, oral or in writing between the parties; that deponent did not agree or undertake to pay *excepting in the manner as stated in said contract of sale and deed*; that the whole amount of the mortgage being fore-closed is due and owing, together with interest from the 4th day of October, 1929, and that there is no set-off, counter-claim, or defense to the same.*

10

20

JULIUS JOACHIMSTHAL.

Subscribed and sworn to before me
this 23rd day of July, 1930.

HELEN T. BOICE,
Notary Public of the State of New Jersey.

30

Italics are those of defendant-appellant.

Schedule A same as Contract on pages 27 to 33.

Schedule B same as Deed on pages 34 to 40.

40

Answering Affidavits—Carl Goldberg.

ANSWERING AFFIDAVITS.

Filed September 19, 1930.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">FRANK R. SMITH, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">COLONIAL WOODWORKING Co., INC., a corporation, <i>et als.,</i> <i>Defendants.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Answering</i></p> <p><i>Affidavits.</i></p>
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20 STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

CARL GOLDBERG, being duly sworn upon his oath according to law, deposes and says:

1. I am the President of the defendant Colonial Woodworking Co. Inc., a corporation of New Jersey, and I am acquainted with the facts in this cause because as one of the officers, I was in direct charge of the transaction.

30 2. During the month of March, 1927, the defendant Julius Joachimsthal was the owner of certain premises in the Town of Irvington, New Jersey, and Colonial Woodworking Co. Inc. was during the same time the owner of certain premises in the City of Newark, New Jersey.

3. The parties entered into an agreement wherein the defendant Julius Joachimsthal purchased the premises from Colonial Woodworking Co. Inc., and Colonial Woodworking Co. Inc.

40

Answering Affidavits—Carl Goldberg.

in turn purchased the premises from Julius Joachimsthal.

4. By agreement in writing the Colonial Woodworking Co. Inc. agreed to pay Twenty Thousand Dollars (\$20,000) for the said premises, and Julius Joachimsthal in turn agreed to pay thirty thousand dollars (\$30,000) for the Colonial premises, said agreements were signed by the parties, a true copy being attached by the complainant in his notice of this motion. 10

5. The said sum of thirty thousand dollars (\$30,000) Julius Joachimsthal agreed to pay as follows:

By having applied against the purchase price for the said premises a first mortgage of ten thousand dollars (\$10,000), and a second mortgage of twenty-five hundred dollars (\$2,500) on one of the tracts and a first mortgage of twelve thousand dollars (\$12,000) and a second mortgage of twenty-five hundred dollars (\$2,500) on the other tract. 20

6. After receiving credit for the said sums and deducting the amount due upon said encumbrances from the said sum of thirty thousand dollars (\$30,000), the balance then due for the sale of the said premises by Colonial Woodworking Co. Inc. to Julius Joachimsthal was to be applied against the purchase price of the premises which were conveyed by Julius Joachimsthal to Colonial Woodworking Co. Inc. 30

7. As part and parcel of said contract, and as a result thereof, and in consummation of the contract referred to herein, the mortgage being foreclosed by the complainant was executed by 40

Answering Affidavits—Carl Goldberg.

Colonial Woodworking Co. Inc. to said Julius Joachimsthal, and on the same day, April 8, 1927, Colonial Woodworking Co. Inc. in accordance with the terms of the agreement referred to conveyed the premises which it agreed to convey to Julius Joachimsthal by deed of Warranty, and as a payment on account of the thirty thousand dollars (\$30,000) purchase price, allowed to Julius Joachimsthal the amount due on the respective mortgages which affected said premises so conveyed, as provided for in the agreement aforesaid.

8. The said Julius Joachimsthal entered into possession of the said premises described in the Warranty Deed of conveyance aforesaid, recorded in Book E-76 of deeds for Essex County on page 489, and collected the rents, issues and profits therefrom, and at all times thereafter peaceably and quietly, had, held, used, occupied, possessed and enjoyed said premises without any let, suit, trouble, molestation, eviction or disturbance on the part of the Colonial Woodworking Co. Inc., his grantor.

9. The said Julius Joachimsthal and his successors in title failed to comply with the terms of said mortgages, and the first mortgagees instituted foreclosure proceedings in this court by reason of which proceedings the Sheriff of Essex County at a sale held by virtue of Writs of Fieri Facias directed to him, sold the said premises and deficiencies resulted from said sale, so that the second mortgagees did not receive anything on account due them on said mortgages as proven in said proceedings.

10. Angelo M. Ruggiero held a second mortgage on one of the tracts, which mortgage

Answering Affidavits—Carl Goldberg.

together with the bond was executed by Colonial Woodworking Co. Inc., and a credit for the amount due upon said mortgage was given to the defendant Julius Joachimsthal in lieu of his paying the said Angelo M. Ruggiero the cash therefor, as he was bound to do.

11. Southern Lumber Co. held an assignment of the other second mortgage which was originally made to Harry Kaplan and its mortgage was wiped out by the foreclosure proceedings. A credit for the amount due upon said mortgage which eventually became the property of the Southern Lumber Co. was given to Julius Joachimsthal in lieu of his payment of said sum when he purchased the premises covered by the said mortgage and therefore he was bound to pay the same.

10

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12. Thereafter Southern Lumber Co. threatened suit, and Colonial Woodworking Co. had no defence and paid the sum of twenty-four hundred dollars (\$2,400) with interest thereon.

13. Thereafter Angelo M. Ruggiero filed suit for deficiency of his said mortgage and the bond which accompanied the same against Colonial Woodworking Co. Inc. in the Essex County Circuit Court, and did on September 24, 1929, recover and enter judgment in the sum of twenty-four hundred ninety-eight dollars and forty-two cents (\$2,498.42), which judgment is filed in Book 108 of Circuit Court Judgments for Essex County, page 359, which judgment is now a lien upon the real estate of the defendant Colonial Woodworking Co. Inc. and which it is required to pay.

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Answering Affidavits—Carl Goldberg.

14. Colonial Woodworking Co. Inc. called upon Julius Joachimsthal to pay the amounts aforesaid which he the said Julius Joachimsthal was bound to pay, but Julius Joachimsthal refused to pay the same, although when he purchased the said premises he was allowed as
10 against his agreed purchase price for the same, the amount due on the mortgage encumbrances affecting said premises, and accepted a conveyance of the same with such allowances, and he thereby was charged with the said mortgage debt and became charged therewith, and assumed the payment of the said debts as effectually as if he had executed the mortgage.

15. By reason of the aforesaid, Colonial Woodworking Co. Inc. is entitled to be re-im-
20 bursed for the amount which it was required or may be required to pay on the debts which were really the debts of Julius Joachimsthal when he purchased the aforementioned premises, and that because of his failure to pay the same and because of the fact that Colonial Woodworking Co. Inc. is and was required to pay the same, it, Colonial Woodworking Co. Inc. is entitled to receive a credit for said sum against the
30 amount due the complainant herein on the mortgage recited in the bill of complaint of the complainant.

16. Colonial Woodworking Co. Inc. was, and still is ready, willing and able, upon proper allowances and deductions to be made to it, as it is entitled to by law by reason of the facts alleged, to pay any balance justly due on account of the mortgage under foreclosure, less such amount as shall be ascertained to be due Colonial
40 Woodworking Co. Inc. in good conscience and

Answering Affidavits—Carl Goldberg.

in accordance with equity. As a matter of fact Colonial Woodworking Co. Inc. offered to pay the amount justly due upon receiving a credit as before stated, but the complainant and the other defendants in this cause refused such an offer.

17. The reasons given by complainant in his notice of motion to strike out the amended answer and counter-claim, are not well founded because complainant is the assignee of Julius Joachimsthal and it is settled law that the assignee of a mortgage takes it subject to all equities and defences existing between the original parties and he can acquire no greater interest than was held by the assignor and all the equities affecting the assignor pass with the assignment to and against the assignee. 10

18. By the terms of the purchase price the mortgage money was by agreement taken as part of the consideration money, and the complainant, as the assignee of Julius Joachimsthal, together with Julius Joachimsthal and the Federal Trust Co., Springfield avenue branch are in conscience bound to indemnify Colonial Woodworking Co. Inc. against the mortgage debt. 20

19. Julius Joachimsthal both in writing and orally agreed to assume and to pay the mortgages affecting the premises which Colonial Woodworking Co. Inc. conveyed to him as aforesaid, and it was an error on the part of the scrivener who drew the agreement and deed for not inserting the assumption clause in so many words, but irrespective of the said clause, the complainant and the other defendants herein are liable for the losses sustained by Colonial Woodworking Co. Inc. on the mortgages aforesaid, because where the purchaser of land encumbered 30 40

Answering Affidavits—Carl Goldberg.

by mortgage or mortgages agrees to pay a particular sum as purchase money, and on the execution of the contract of purchase, the amount of the mortgage or mortgages is deducted from the consideration, and the land is conveyed subject to the mortgage or mortgages, the purchaser is
 10 bound to pay the mortgage debts whether he agreed to do so by express words or not.

20 20. On numerous occasions during the negotiation which led to the ultimate agreement and sale, it was my understanding with Julius Joachimsthal that he was to assume payment of the said mortgages, and Julius Joachimsthal told me on several occasions that he would pay same. He never denied being liable therefor and always knew that he would have to pay the same.

21. It is not true that said contract of sale and deed contained the whole and entire agreement between the parties. The attorney representing Julius Joachimsthal, also represented Colonial Woodworking Co. Inc. in that matter, and it was an error on his part for not reducing to writing our actual agreements.

30 22. The whole amount of complainant's mortgage is not due and owing. Colonial Woodworking Co. Inc. is entitled to be reimbursed and a proper allowance made on account of its counterclaim.

CARL GOLDBERG.

Sworn and subscribed to before
 me this 29th day of July,
 1930.

40 SIGMUND N. EPSTEIN,
 A Notary Public of N. J.

Answering Affidavits—Samuel D. Goldberg.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } SS.:

SAMUEL D. GOLDBERG, being duly sworn upon his oath, according to law, deposes and says:

1. I am an employee of Colonial Woodworking Co. Inc. the defendant in this suit, and I know of my own knowledge all of the facts leading up to the purchase and sale of premises between Colonial Woodworking Co. Inc., and Julius Joachimsthal, which premises are more particularly described in the bill of complaint and counter-claim filed in this cause. 10

2. As a matter of fact, I was one of the parties who helped make the deal and therefore am cognizant of all of the facts in this matter. 20

3. Prior to the actual consummation of the deal and on numerous occasions thereafter, I personally talked with Mr. Joachimsthal, and I know that the arrangement was that Mr. Joachimsthal should assume and agree to pay the mortgages on the premises eventually conveyed to him by Colonial Woodworking Co. Inc. 20

4. After foreclosure proceedings were commenced by the first mortgagees, I spoke to Mr. Joachimsthal and called his attention to the fact that he was obligated for the payment of the said mortgages because of our agreement, that he assumed the same and also because proper allowances were made to him at the time of closing, and he assured me that Colonial Woodworking Co. Inc. need have no fear of any trouble on account of the said mortgages, and that he knew that he assumed the payment thereof, and that he was going to pay the same. 30 40

Answering Affidavits—Samuel D. Goldberg.

5. At no time did he deny his liability for the payment of the said debts. At all times he admitted his being obligated to pay the same, and that he would pay the same.

10 6. I know of my own knowledge that said premises were conveyed to him by warranty deed, and that the said Julius Joachimsthal entered into the possession of the said premises, collected the rents, issues and profits therefrom and at all times thereafter enjoyed quiet and peaceful possession thereof without in the least being disturbed or molested by the Colonial Woodworking Co. Inc.

20 7. I also know of my own knowledge that Angelo M. Ruggiero who is one of the second mortgagees recovered a judgment against Colonial Woodworking Co. for twenty-four hundred ninety-eight dollars and forty-two cents (\$2,498.42) and interest and costs, and that the Southern Lumber Co. which by assignment held the other second mortgage threatened suit, and Colonial Woodworking Co. Inc. paid in full the said mortgage.

30 8. I also know of my own knowledge that Colonial Woodworking Co. Inc. executed the bonds of the two mortgages aforesaid.

9. After the litigation started on the debts of the second mortgages aforesaid, I got in touch with Mr. Joachimsthal and asked him why he does not take care of the same as he had agreed to do, and as he was required to do, but he refused to give any reasons, and continued to refuse to pay the same.

40 10. Colonial Woodworking Co. Inc. is ready, willing and able to pay the balance due on ac-

Answering Affidavits—Samuel D. Goldberg.

count of the mortgage, upon a proper allowance being made to it of the moneys which it already paid or may be called upon in the future to pay. As a matter of fact such an offer of payment was made, but was refused.

11. It is not true as recited in the affidavit of Julius Joachimsthal that there was no other agreement, oral or in writing between the parties, and that he did not agree or undertake to pay, said mortgages excepting in the manner as stated in said contract of sale and deed. He did agree to assume and pay the mortgages, and it was part of the agreement of purchase and sale, and I for one was always under the impression, that it was in the agreement recited in so many words.

12. It is not true that the whole amount of the mortgage being foreclosed is due and owing together with interest and costs. Colonial Woodworking Co. Inc. is entitled to a credit by reason of its having paid the Southern Lumber Co. mortgage, and the liability on the Ruggiero judgment.

SAMUEL D. GOLDBERG.

Sworn and subscribed to before
me this 29th day of July,
1930.

SIGMUND N. EPSTEIN,
A Notary Public of N. J.

Answering Affidavits—Jack Goldman.

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

JACK GOLDMAN, being duly sworn upon his oath, according to law, deposes and says:

10 1. I am the vice-president of the Colonial Woodworking Co. Inc., and I was present at the negotiations which led up to the purchase and sale of the premises involved in this cause, as well as in the answer and counter-claim.

20 2. I know of my own knowledge that the defendant Julius Joachismsthal agreed to pay for the two houses conveyed to him by the Colonial Woodworking Co. Inc. the sum of thirty thousand dollars (\$30,000), that having ultimately been agreed upon as the actual specific purchase price, at which the houses were to go.

3. I also know of my own knowledge that as part of the consideration money Julius Joachismsthal agreed to assume and to pay the mortgages effecting the said premises more particularly recited in the answer and counter-claim as well as the amended answer and counter-claim filed in this cause.

30 4. At the closing of title and delivery of deed, Julius Joachismsthal received a credit for the said mortgages out of the purchase price. All of the negotiations leading up to the conveyance of the premises included the arrangements that Julius Joachimsthal was to pay the said mortgages.

40 5. As an officer of the company, I remember distinctly insisting upon the assumption of the mortgages by Julius Joachimsthal and his agreement to assume and pay the said mortgages.

Answering Affidavits—Jack Goldman.

6. It was a part of the agreement and the contract was consummated on that basis that Julius Joachimsthal was to pay the mortgage incumbrances affecting the said premises, which were conveyed to him by Colonial Woodworking Co. Inc., and the mortgage incumbrances including interest thereon were deducted at the time of closing, and a proper credit given Julius Joachimsthal on account thereof. 10

7. Contrary to the said arrangement Joachimsthal took all of the rents, issues and profits of the premises, and neglected, refused and refrained from paying the mortgage incumbrances, so that the first mortgagees foreclosed their mortgages, and thereby wiped out the second mortgages affecting the said premises. 20

8. I further say that the Southern Lumber Co. mortgage was paid and satisfied by Colonial Woodworking Co. Inc. by the payment of the amount due thereon with interest, and that the Angelo M. Ruggiero mortgage was sued upon for deficiency and judgment recovered in the Essex County Circuit Court for the sum of twenty-four hundred ninety-eight dollars and forty-two cents (\$2,498.42) including interest and costs. 30

9. I made it my business to speak to Mr. Joachimsthal on several occasions after foreclosure was commenced on the first mortgages, and reminded him of the arrangement; that he agreed to assume and pay the mortgages and save Colonial Woodworking Co. Inc. harmless from any suits, damages or expenses. He agreed with me that that was the arrangement and promised to take care of the mortgages and 40

Answering Affidavits—Jack Goldman.

reimburse Colonial Woodworking Co. Inc. for moneys advanced to the Southern Lumber Co., but contrary to such an arrangement, he never took care of the same, although we demanded of him to do so.

10 10. I know of my own knowledge that Colonial Woodworking Co. Inc. executed the bonds to Angelo M. Ruggiero and Southern Lumber Co. as well as the mortgages accompanying the same.

20 11. It is not true, as stated by Julius Joachimsthal in his affidavit that there was no arrangement as to his assuming and agreeing to pay the mortgages. On the contrary, the arrangement was very specific, and up to the last minute, he continued to promise payment thereof, because, as he said he was a man of his word and his word was as good as his bond, particularly where he agreed to do so at the time of the making of the contract for the sale, and as part of the consideration therefor.

12. It is not true that the whole amount is due on account of complainant's mortgage.

JACK GOLDMAN.

30 Sworn and subscribed to before
me this 29th day of July,
1930.

SIGMUND N. EPSTEIN,
A Notary Public of N. J.

Answering Affidavits—Grace Kirk.

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

GRACE KIRK, being duly sworn upon her oath, according to law, deposes and says:

1. I am the bookkeeper of the Colonial Woodworking Co. Inc., and have been in its employ for a long time prior to March, 1927. 10

2. I remember distinctly the negotiations leading up to the purchase from Julius Joachimsthal of his premises and the sale to him by Colonial Woodworking Co. of its two houses, because the negotiations were carried on in the office of the Colonial Woodworking Co. Inc. within my hearing.

3. It was always the understanding among the parties to the said transaction, that Julius Joachimsthal assumed and agreed to pay the mortgage encumbrances affecting the premises conveyed to him, because that was a point insisted upon by the officers of the Colonial Woodworking Co. Inc. in making the deal. 20

4. In my presence and within my hearing, Julius Joachimsthal assumed and agreed to pay the said mortgages and agreed to be bound by the terms thereof, fully as well as if he had executed the same. 30

5. As bookkeeper of the Colonial Woodworking Co. Inc., I know of my own knowledge that Colonial Woodworking Co. Inc. has paid the amount which was due on the Southern Lumber Co. mortgage, and that a judgment was recovered against it by Angelo M. Ruggiero for the amount due him on his said mortgage, both of the said mortgages having been wiped out by a 40

Answering Affidavits—Grace Kirk.

foreclosure of the prior mortgages by reason of the failure of Julius Joachimsthal and his successors in title, to pay and satisfy said mortgages.

GRACE KIRK.

10 Sworn and subscribed to before
me this 29th day of July,
1930.

SIGMUND N. EPSTEIN,
A Notary Public of N. J.

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PETITION.

Filed December 10, 1930.

IN CHANCERY OF NEW JERSEY.

To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey: 10

The petition of Colonial Woodworking Co. Inc., a corporation of New Jersey, respectfully shows unto your Honor that:

1. On or about the 5th day of May, 1930, the complainant in this cause filed his bill to foreclose a certain mortgage on premises in the Town of Irvington, more particularly described in the bill of complaint in this cause.

2. Thereafter your petitioner caused an answer and counter-claim to be filed and thereafter your petitioner, by duly verified petition, prayed unto your Honor for permission to amend the said answer and counter-claim and by order of July 14, 1930, your Honor permitted your petitioner to file an amended answer and counter-claim. All of the said pleadings being on file in the office of the clerk in Chancery. 20

3. Since the filing of the answer and counter-claim and the amended answer and counter-claim, your petitioner has discovered that it failed to exactly and succinctly set out the debts due it, it having left out the dates upon which the mortgages of Angelo M. Ruggiero and Southern Lumber Co., matured and became due and payable. 30

4. Your petitioner, therefore, shows unto your Honor that the bond and mortgage given by it 40

Petition.

to Angelo M. Ruggiero was dated September 24, 1926, acknowledged September 24, 1926, and recorded on October 2, 1926, in Book C-59 of Mortgages for Essex County on page 184 to secure the sum of \$2,307.14 and that by its terms, the said mortgage became due and payable on September 24, 1928.

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5. That the mortgage given by it to Harry Kaplan was dated September 1, 1926, acknowledged September 7, 1926, and recorded on September 21, 1926, in the Register's Office of Essex County in Book I-58 of Mortgages for said County on page 595, to secure the principal sum of Twenty-four Hundred Dollars (\$2400.00). By the terms of the said mortgage, it became due and payable on September 1, 1928. Said mortgage was assigned to Southern Lumber Co., a corporation of New Jersey, by assignment of mortgage dated December 29, 1927, acknowledged December 29, 1927, and recorded December 30, 1927, in the Register's Office of Essex County in Book 193 of Assignments of Mortgages for said County on page 465. Your petitioner further shows that the maturity of the said debt was accelerated by reason of a default in the non-payment of taxes and/or other municipal liens, as well as non-payment of interest as therein provided and remained unpaid and in arrears for greater periods of time, than in the said bond and mortgage expressly provided. That the said mortgage was subsequent to a building and loan mortgage in the sum of Ten Thousand Dollars (\$10,000.00), which was a prior lien on the mortgaged premises, and the duration of the second mortgage was predicated upon and limited upon certain special provisions

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Petition.

in the first mortgage contained and the said second mortgage contains the following specific clause:

“This mortgage is second and subsequent to a mortgage on the sum of Ten Thousand Dollars (\$10,000.) held by the West End Building and Loan Association of Newark, N. J., and it is agreed that should the said party of the first part, its successors and assigns make default in the monthly payments of principal or interest on the mortgage held by the said building and loan association, and should said default continue for a space of two months, then in that event the amount due on this mortgage is to become due and payable at once at the option of the said party of the second part, his heirs, administrators or assigns.”

Your petitioner therefore prays unto your Honor that an order may be made permitting your petitioner to file an additional amended answer and counter-claim in order to set up the matters and things herein contained as regards the maturity of the said debts.

ZUCKER & GOLDBERG,
Solicitors for Petitioner. 30

11/5/30.

Petition.

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

CARL GOLDBERG, of full age, being duly sworn according to law, upon his oath deposes and says:

10 I am the president of Colonial Woodworking Co., Inc., the defendant in this cause.

I have read the foregoing petition and all the facts therein contained; I believe the same to be true to the best of my knowledge, information and belief.

CARL GOLDBERG.

Sworn and subscribed to before
 me this 18th day of Novem-
 20 ber, 1930.

LEONARD H. GOLDBERG,
 An Attorney at Law of N. J.

Filed December 10, 1930.

JOHN H. BACKES,
 V.-C.

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ORDER.

Filed December 10, 1930.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>FRANK R. SMITH, <i>Complainant,</i> <i>and</i> COLONIAL WOODWORKING Co., INC., a corporation, <i>et als.</i>, <i>Defendants.</i></p>	}	<p>10</p> <p><i>On Bill, &c.</i></p> <p><i>Order.</i></p>
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This matter being opened to the Court by Zucker & Goldberg, solicitors for and of counsel with the defendant, Colonial Woodworking Co. Inc., and a duly verified petition having been filed in this Court praying for an order to be made permitting this defendant to file an additional amended answer and counter-claim, for the purpose of setting up the maturity of the debts for which this defendant claims a set-off, 20

It is on this 9th day of November, 1930, on motion of Zucker & Goldberg, aforesaid, ORDERED, ADJUDGED and DECREED that the defendant, Colonial Woodworking Co., Inc., be and it is hereby authorized and empowered to file said additional amended answer and counter-claim within day from the date hereof, and 30

It is further ORDERED that a true but uncertified copy of the within order and additional amended answer and counter-claim to be filed,

Order.

be served upon the solicitors of the complainant
within twenty days from the date hereof.

E. R. WALKER,

C.

Respectfully advised,

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JOHN H. BACKES,
V.-C.

Entry of the above order is hereby consented
to.

ROSSBACH & CRUMMY,
Solicitors for Complainant.

Filed December 10, 1930.

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JOHN H. BACKES,
V.-C.

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**ADDITIONAL AMENDED ANSWER AND
COUNTER-CLAIM.**

Filed December 10, 1930.

IN CHANCERY OF NEW JERSEY.

79/144.

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Between

FRANK R. SMITH,
Complainant,
and
COLONIAL WOODWORKING Co.,
INC., a corporation, *et als.,*
Defendants.

On Bill, &c.

*Additional
Amended
Answer and
Counter-
claim.*

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Additional amended answer and counter-claim of Colonial Woodworking Co. Inc., a corporation, against the complainant; and against the other defendants.

This defendant says that:

1. On September 24, 1926, this defendant, being indebted unto Saul Rubin, Charles M. Neiss and Angelo M. Ruggiero in the sum of \$2,307.14, executed and delivered to them, under its seal, a bond in double said amount, and to secure payment of the said bond, executed to the said Saul Rubin, Charles M. Neiss and Angelo M. Ruggiero, a mortgage in the sum of \$2,307.14, which mortgage encumbers certain premises in the City of Newark, County of Essex and State of New Jersey, a true copy of which mortgage is attached hereto and made a part hereof, and which mortgage, in addition

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Additional Amended Answer and Counter-claim.

to other terms therein specified and contained, includes the following provision:

“The entire amount of this mortgage is to be due and payable in two years from the date hereof, which will be on the 24th day of September, 1928.”

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2. Said mortgage was acknowledged on September 24, 1926, and the certificate of acknowledgment attached thereto and was recorded on October 2, 1926, in the Register's Office of Essex County in Book C-59 of Mortgages for said County, pages 184-186.

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3. Subsequently, by deed of assignment dated December 8, 1926, Saul Rubin and Charles M. Neiss sold, assigned and transferred unto Angelo M. Ruggiero their interest in and to said mortgage, and therein represented that the full sum of \$2,307.14 was due and payable, with interest from September 24, 1926, which assignment, having been acknowledged on December 8, 1926, and the certificate of acknowledgment attached thereto, was recorded on December 9, 1926, in Book 184 of Assignments for Essex County, page 543, a true copy of said assignment being attached hereto, as well as a true copy of the said bond.

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4. That by the terms of the said bond and mortgage, the debt matured, and the amount due thereon became due and payable on September 24, 1928.

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5. On September 1, 1926, this defendant, being indebted unto Harry Kaplan in the sum of \$2,400, executed and delivered to him a bond in the penal sum of \$4,800, and to secure said bond, executed and delivered to him, a mortgage

Additional Amended Answer and Counter-claim.

in the sum of \$2,400, a true copy of the said mortgage being attached hereto and made a part hereof. Said mortgage contained the following express provision:

“This mortgage is second and subsequent to a mortgage in the sum of \$10,000 held by the West End Building and Loan Association of Newark, N. J., and it is agreed that should the said party of the first part, its successors and assigns make default in the monthly payment of principal or interest on the mortgage held by the said building and loan association, and should said default continue for a space of two months, then in that event, the amount due on this mortgage is to become due and payable at once at the option of the said party of the second part his heirs administrators or assigns”;

which mortgage, having been acknowledged on September 17, 1926, and the certificate of acknowledgment attached thereto, was recorded on September 21, 1926, in the Register's Office of Essex County in Book I-58 of Mortgages for said county, on pages 595-597, and which mortgage by its terms matured and became due and payable on September 1, 1928.

6. Southern Lumber Co., a corporation, the owner thereof, by assignment of mortgage dated December 29, 1927, and recorded on December 30, 1927, in Book 193 of Assignments for Essex County, page 465.

7. During the months of May, June, July, August and September, 1928, the owner of the premises encumbered by said mortgage, refused, refrained and neglected from paying monthly

Additional Amended Answer and Counter-claim.

10 dues and interest to the prior mortgagee, the building and loan association, and on or about September 18, 1928, the West End Building and Loan Association declared a default to exist in the terms of its said mortgage and caused a bill to foreclose to be filed in this Honorable Court, and on September 19, 1928, filed a lis pendens in the Register's Office of Essex County in Book L of Lis Pendens for said County, on page 39, and made the Southern Lumber Co. a party defendant to said suit.

20 8. By reason of the aforesaid, the payment of the debt due Southern Lumber Co. was accelerated and the said debt matured, as of the date of the default in the terms of the West End Building and Loan Association mortgage. Also the semi-annual payment of interest, which was due on or before March 1, 1928, remained due and unpaid, so that the Southern Lumber Co. declared a default to exist and demanded payment of the principal sum and accrued interest due it on the said mortgage.

30 9. The mortgage under foreclosure by the complainant, which was originally held by the defendant, Julius Joachimsthal, was assigned by him to the Federal Trust Company (Springfield Avenue Branch) by deed of assignment dated October 1, 1928, acknowledged on October 1, 1928, and recorded on October 2, 1928, in Book 201 of Assignments of Mortgages for Essex County, page 570.

40 10. This defendant, Colonial Woodworking Co. Inc. has since the filing of the amended answer and counter-claim, paid and satisfied the judgment of Angelo M. Ruggiero referred to herein by paying the sum of \$2,525.00.

Additional Amended Answer and Counter-claim.

By way of counter-claim against the complainant, and the defendants, Federal Trust Company and Julius Joachimsthal, this defendant says that:

1. It repeats all of the allegations in the within answer expressly recited and makes them a part hereof, fully as well as if they were herein at length contained, and also reaffirms all of the allegations in the prior amended answer and counter-claim contained, fully as well as if they were herein at length contained, and amends the said first and prior counter-claim to include the allegations herein contained. 10

2. This defendant therefore repeats and reaffirms all of the prayers in the prior answer and counter-claim contained and makes them a part hereof, fully as well as if they were herein at length recited. 20

ZUCKER & GOLDBERG,
Solicitors for Defendant, Colonial Wood-
working Co. Inc.

November 6, 1930.

MORTGAGE

THIS INDENTURE, Made the twenty-fourth day of September, in the year of Our Lord One Thousand Nine Hundred and Twenty-six, BETWEEN, COLONIAL WOODWORKING CO., a corporation having its principal office in the Town of Irvington, in the County of Essex and State of New Jersey, party of the first part, hereinafter known as the Mortgagor, 30

AND, SAUL RUBIN, CHARLES M. NEISS and ANGELO M. RUGGIERO, of the City of 40

Additional Amended Answer and Counter-claim.

Newark, in the County of Essex and State of New Jersey, party of the second part, hereinafter known as the Mortgagees.

10 WITNESSETH, that the said mortgagor, for and in consideration of the sum of TWENTY-THREE HUNDRED SEVEN DOLLARS AND
 20 FOURTEEN CENTS, lawful money of the United States of America, to it in hand well and truly paid by the mortgagee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said mortgagor therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these present does give, grant, bargain, sell, alien, enfeoff, convey and confirm to the
 30 said mortgagee and to their heirs, executors, administrators, and assigns. ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the CITY OF NEWARK, in the COUNTY OF ESSEX and STATE OF NEW JERSEY.

30 Beginning at a point in the easterly line of Wainwright Street distant four hundred sixty-five (465) feet southerly from the corner formed by the intersection of the easterly line of Wainwright Street with the southerly line of Lyons Avenue; thence running south 47 degrees 53 minutes east one hundred feet (100); thence south 42 degrees 7 minutes west forty feet (40); thence north 47 degrees 53 minutes west one hundred feet (100) to Wainwright Street; thence along same north 42 degrees 7 minutes east forty feet (40) to the point and place of Beginning.

40 This mortgage is second in priority to a mortgage in the nominal sum of Twelve Thousand

Additional Amended Answer and Counter-claim.

Dollars (\$12,000.00) held by the Manhattan Building and Loan Association of Newark.

This is a purchase money mortgage and is given to secure part of the purchase price of the above mentioned conveyance, and is to be recorded simultaneously with the deed of even date herewith.

10

The mortgagor herein is to have the privilege of pre-paying the entire amount of this mortgage at any time prior to its due date with interest to the date of pre-payment.

TOGETHER with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining. Also all the estate, right, title, interest, property, claim and demand whatsoever of the mortgagor of, in and to the same, and of, in and to every part and parcel thereof.

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TO HAVE AND TO HOLD all and singular the above described tract of land and premises with the appurtenances, unto the said mortgagees, their heirs, executors, administrators and assigns, to the only proper use, benefit and behoof of the said mortgagees, their heirs, executors, administrators and assigns, forever. Provided always, and it is agreed by and between the parties to these presents that if the said mortgagor, its successors and assigns do and shall well and truly pay, or cause to be paid, to the said mortgagees, their heirs and assigns, the sum of TWENTY-THREE HUNDRED SEVEN DOLLARS FOURTEEN CENTS as follows:

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The entire amount of this mortgage is to be due and payable in two years from the date hereof, which will be on the 24th day of September, 1928.

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Additional Amended Answer and Counter-claim.

with lawful interest for the same from the 24th day of September, 1926, at the rate of six per cent. per annum, payable semi-annually according to the conditions of a certain bond, bearing even date herewith, in the penal sum of FORTY-SIX HUNDRED FOURTEEN DOLLARS AND TWENTY EIGHT CENTS made by said party of the first part without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever, thence and from thenceforth these presents and said obligation shall cease and be void, anything herein and therein contained to the contrary in anywise notwithstanding.

The principal or any part thereof not less than Five Hundred Dollars, may be paid at any time before maturity, on any interest day herein reserved, upon thirty days' written notice to the holder of the Mortgage.

AND THE SAID MORTGAGOR, for itself, its successors and assigns does covenant and grant to and with the said mortgagee, that it shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon, or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof.

AND THE MORTGAGOR, hereby warrants and defends the title to the said lands and premises.

The mortgagor, its successors and assigns, shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire by in-

Additional Amended Answer and Counter-claim.

surers, through such broker or brokers selected
 and in an amount approved by the mortgagees,
 their heirs and assigns, and assign the policy or
 policies and certificate or certificates thereof to
 the mortgagees, their heirs, executors, admin-
 istrators and assigns, as collateral security for
 the payment of the principal and interest afore- 10
 said; and it is agreed that if the mortgagor, its
 successors and assigns, shall neglect to pay all or
 any tax, assessment or other municipal or
 governmental rate, charge, imposition, or any in-
 stallment or installments of monthly Building
 Loan dues and interest, or any sums payable
 under any lien superior hereto, or any premium
 for insurance, as aforesaid, on any day whereon
 the same shall become due and payable, after the
 period of default aforesaid, then it shall be law- 20
 ful for the mortgagees, their heirs, executors, ad-
 ministrators and assigns, to pay such charges,
 and the sum or sums so paid shall be a lien on
 the said mortgaged premises added to the amount
 secured hereby, with interest at six per cent. per
 annum, and, in the event of such payment, at the
 option of the mortgagees, their heirs or assigns,
 the principal sum secured hereunder shall be-
 come due and payable, and agrees that if default 30
 be made in the payment of any installment of
 principal or of the said interest, or any part
 thereof, on any day whereon the same is made
 payable as hereinbefore expressed, and should
 the same remain unpaid and in arrears for the
 space of thirty days, or if default be made in the
 payment of any of said taxes, water rents, or
 other municipal or governmental rate, charge,
 imposition or any money payable under the terms
 of any mortgage lien paramount hereto, on any
 day whereon the same shall become due and 40

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payable, and should the same remain unpaid and in arrears for the space of sixty days, or in the event that any building shall be demolished or removed from the mortgaged premises (or if the removal or demolition thereof is threatened) without the consent in writing of the mortgagee or holder of this mortgage, or in the event that the owner of the mortgaged premises shall fail, within ten days after written request therefor, to furnish a statement of the amount due and owing for principal and interest hereunder, or evidence of the payment of taxes, water rents, interest and principal of prior mortgages or any carrying charge, or in the event that default shall be made in any of the terms, covenants and conditions herein contained, or contained in any mortgage constituting a lien upon the mortgaged premises prior and superior to the lien hereof, or should any action be commenced to foreclose any such prior mortgage, or should the owner of the mortgaged premises fail, for a period of thirty days, to begin compliance with any requirements, recommendation, or recommendations of any of the Departments or authority of the State of New Jersey, or the municipality where such mortgaged premises are situate, such municipality or State Department or authority having jurisdiction over the mortgaged premises, or in the event of the adjudication in bankruptcy or insolvency of the mortgagor or the owner of the mortgaged premises, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of money, with all arrearages of interest thereon, and any other charges paid by the holder of this mortgage, shall, at the option

Additional Amended Answer and Counter-claim.

of the mortgagee and assigns, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary hereof in anywise notwithstanding.

AND agrees that the said mortgagees, their heirs, executors, administrators or assigns, shall and may, from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said mortgagor, its successors or assigns, or of any other person or persons whatsoever.

AND agrees that if default shall be made, as aforesaid, the mortgagees, their heirs, executors, administrators and assigns, shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises, and to let the said premises, and receive the rents, issues and profits thereof, and to apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured, and said rents and profits are, in the event of any such default, hereby assigned to the mortgagees, their heirs and assigns and the mortgagees, their heirs and assigns, shall also be at liberty immediately after any such default, upon proceedings being commenced for the foreclosure of this mortgage, to apply for the appointment of a receiver of the rents and profits of the said premises, and be entitled to the ap-

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Additional Amended Answer and Counter-claim.

pointment of such receiver as a matter of right, as security for the amounts due the mortgagees, their heirs and assigns without consideration of the value of the mortgaged premises or solvency of any person or persons liable for the payments of such amounts.

10 IN WITNESS WHEREOF the said party of the first part has caused its common seal to be hereto affixed and attested by its Secretary and these presents to be signed by its President, the day and year first above written.

COLONIAL WOODWORKING CO.

(SEAL) By CARL GOLDBERG,
Pres.

20 Signed, Sealed and Delivered
in the presence of

Attest: ABE W. HOLDER, Secretary.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. }SS.:

30 BE IT REMEMBERED, that on this 24th day of September, in the year of our Lord One Thousand Nine Hundred and twenty-six, before me, the subscriber, AN ATTORNEY AT LAW OF NEW JERSEY, personally appeared, ABE W. HOLDER, who, being by me duly sworn on his oath, says that he is the Secretary of the COLONIAL WOODWORKING CO. the grantor named in the within instrument; that CARL GOLDBERG is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed
40 to said Instrument is such corporate seal and was

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thereto affixed, and said Instrument signed and delivered by said President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

ABE W. HOLDER.

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Sworn and subscribed before me
at Newark, N. J., the date afore-
said.

LOUIS D. GOLDBERG,
An Atty at Law of N. J.

BOND

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That, COLONIAL WOODWORKING CO., a corporation having its principal office in the Town of Irvington, in the County of Essex and State of New Jersey, is held and firmly bound unto SAUL RUBIN, CHARLES M. NEISS and ANGELO M. RUGGIERO, of the City of Newark, in the County of Essex and State of New Jersey in the penal sum of FORTY SIX HUNDRED FOURTEEN DOLLARS and TWENTY EIGHT CENTS (\$4614.28) lawful money of the United States of America, to be paid to the said SAUL RUBIN, CHARLES M. NEISS and ANGELO M. RUGGIERO, or assigns, for which payment well and truly to be made it binds itself, its heirs, executors, administrators, or assigns firmly by these presents. Sealed with the Obligor's seal and dated the 24th day of September, One Thousand Nine Hundred and Twenty-six.

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THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bounden COLONIAL WOODWORKING CO., a corporation of New Jersey, its successors or assigns, shall well and truly pay, or cause to be paid unto the above named SAUL RUBIN, CHARLES M. NEISS, ANGELO M. RUGGIERO, their heirs, executors, administrators or assigns, the just and full sum of, TWENTY THREE HUNDRED SEVEN DOLLARS AND FOURTEEN CENTS (\$2307.14) in accordance with the terms and conditions of a certain mortgage accompanying this bond, which will be on the 24th day of September, which will be in the year One Thousand Nine Hundred and Twenty-eight, and the interest thereon, to be computed from September 24, 1926 at and after the rate of six per cent per annum, and to be paid semi-annually without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the performance of any of the terms, covenants and conditions contained in the Mortgage accompanying this Bond (the said terms, covenants and conditions, and all matters and things contained in said Mortgage being hereby made a part hereof as though particularly incorporated herein), or should any of the event or contingencies occur by reason of which the time for the payment of the said Mortgage matures as set forth therein, or should any default be made in the payment of the said interest or any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal or

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governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the Mortgage accompanying this Bond, and become due and payable, and should the said interest, or principal remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space or sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of money, or so much thereof as may then remain unpaid, with all arrearage of interest thereon, shall, at the option of the said obligee, or the legal representatives of the said obligee, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Principal secured by this Bond, or any part thereof not less Five Hundred Dollars, may be paid at any time before maturity, on any interest day herein reserved, upon thirty days' written notice to the holder of the Mortgage accompanying this Bond.

AND IT IS FURTHER EXPRESSLY AGREED that the said obligor shall not be entitled to and will not claim any credit on the interest payable on the Mortgage securing this Bond for taxes which may be levied upon the

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mortgaged premises, or for any part of said taxes.

COLONIAL WOODWORKING CO.

By CARL GOLDBERG,
President.

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Signed, Sealed and Delivered
in the presence of

Attest:

ABE W. HOLDER,
Secretary.

(SEAL)

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The obligor, as further collateral security for the mortgage debt hereby secured, hereby assigns to the obligee, all right, title and interest in and to the shares of stock held by the MANHATTAN B & L ASS'N, and upon the acquisition of the said premises by virtue of a foreclosure the holder of the Mortgage accompanying this Bond, or the purchaser at foreclosure sale, shall be fully entitled to all the equity in said shares, and to have them transferred on the books of said Association in the name of the holder of said Mortgage, or purchaser, at the foreclosure sale.

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This assignment is, however, made subject to the lien of the said Association on said shares, by virtue of its being the holder of a Mortgage

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Additional Amended Answer and Counter-claim.

embracing the premises described in the Mortgage accompanying this Bond.

COLONIAL WOODWORKING CO.

By CARL GOLDBERG.

Signed, Sealed and Delivered
in the presence of

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Attest:

ABE W. HOLDER.

(SEAL)

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that we, SAUL RUBIN and CHARLES M. NEISS, party of the first part; in consideration of the sum of ONE DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATIONS, lawful money of the United States of America, to us in hand paid by ANGELO M. RUGGIERO, party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his heirs, executors, administrators or assigns, all our $\frac{2}{3}$ interest in and to a certain Indenture of Mortgage bearing date the twenty-fourth day of September, One Thousand Nine Hundred Twenty-six made by COLONIAL WOODWORKING CO., a corporation of N. J. to SAUL RUBIN, CHARLES M. NEISS

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Additional Amended Answer and Counter-claim.

and ANGELO M. RUGGIERO, on lands in Newark, New Jersey, to secure the payment of the sum of TWENTY THREE HUNDRED SEVEN DOLLARS FOURTEEN CENTS (\$2307.14), which mortgage is recorded in the Register's Office of the County of Essex in Book C-59 of
10 Mortgages, pages 184-186.

TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD the same unto the said party of the second part, his heirs, executors, administrators, or assigns, forever for his own use subject only to the proviso in the said Indenture of Mortgage mentioned: AND we do hereby make, constitute, and appoint the said party of the
20 second part; our true and lawful attorney, irrevocable, in our name, or otherwise, but at his proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as we might or could do if these presents were not made: AND we do hereby covenant, promise and agree to and with the said party of the
30 second part, that there is now due and owing upon the said Bond and Mortgage the sum of TWENTY THREE HUNDRED SEVEN DOLLARS AND FOURTEEN CENTS (\$2307.14) together with interest at the rate of six per cent payable semi-annually from September 24, 1926.

IN WITNESS WHEREOF, we have hereunto set our hands and seal the 8th day of December, in

Additional Amended Answer and Counter-claim.

the year of Our Lord One Thousand Nine Hundred and twenty-six.

SAUL RUBIN
CHARLES M. NEISS

Signed, Sealed and Delivered
in the presence of 10
L. D. GOLDBERG

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

BE IT REMEMBERED that on this 8th day of December, in the year of our Lord One Thousand Nine Hundred and Twenty-six before me, AN ATTORNEY AT LAW OF NEW JERSEY, 20
personally appeared, SAUL RUBIN and CHARLES M. NEISS, who, I am satisfied are the persons mentioned in the within Instrument, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

LOUIS D. GOLDBERG, 30
An Attorney at Law of New Jersey.

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MORTGAGE

THIS INDENTURE, made the first day of September, in the year of our Lord One Thousand Nine Hundred and twenty-six. BETWEEN COLONIAL WOODWORKING CO. INC., a corporation of the State of New Jersey, party of the first part. AND, HARRY KAPLAN of the City of Newark, in the County of Essex and State of New Jersey, party of the second part.

WHEREAS, the said party of the first part is justly indebted to the said party of the second part, in the sum of TWENTY-FOUR HUNDRED.....DOLLARS lawful money of the United States of America, secured to be paid by its certain bond or obligation, bearing even date with these presents, in the penal sum of FORTY-EIGHT HUNDRED DOLLARS, lawful money as aforesaid conditioned for the payment of the said first mentioned sum of TWENTY-FOUR HUNDRED DOLLARS, lawful money as aforesaid, to the said party of the second part, his heirs or assigns, on the first day of September, which will be in the year One Thousand Nine Hundred and twenty-eight and interest thereon, to be computed from the date hereof at and after the rate of six per cent per annum and to be paid semi-annually.

AND IT IS THEREBY EXPRESSLY AGREED that should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and

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should the said interest or any part thereof remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of TWENTY FOUR HUNDRED. . . . 10
 DOLLARS, with all arrearage of interest thereon, shall, at the option of the said party of the second part, his heirs or assigns, become and be due and payable immediately thereafter although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in any- 20
 wise notwithstanding; and the said Mortgagee, may at his opinion, pay such tax, assessment or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the said bond and this mortgage, and shall be payable on demand with interest at six per centum per annum, as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear. 30

Now THIS INDENTURE WITNESSETH, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of One dollar to it in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby 40

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acknowledged has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, ALL that certain tract or parcel of land
 10 and premises, hereinafter particularly described, situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey:

BEGINNING in the westerly line of Wainwright Street at a point therein distant three hundred and twenty-four feet and fifty-seven one-hundredths of a foot southerly from the southerly line of Lyons Avenue; thence along the westerly line of Wainwright Street south forty-two degrees seven minutes west thirty-five feet; thence
 20 north forty-seven degrees fifty-three minutes west one hundred feet; thence north forty-two degrees seven minutes east thirty-five feet; thence south forty-seven degrees fifty-three minutes east one hundred feet to the westerly line of Wainwright Street, the point and place of BEGINNING.

Being the same premises conveyed to the said party of the first part by deed from the party of the second part and wife of even date herewith, and this mortgage is given to secure part
 30 of the purchase price for said conveyance.

This mortgage is second and subsequent to a mortgage in the sum of Ten Thousand Dollars held by The West End Building and Loan Association of Newark, N. J., and it is agreed that should the said party of the first part, its successors and assigns make default in the monthly payments of principal or interest on the mortgage held by the said building and loan association, and should said default continue for a space
 40 of two months, then in that event the amount due

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on this mortgage is to become due and payable at once at the option of the said party of the second part, his heirs, administrators or assigns.

The owner of the said property shall have the privilege of paying off the principal sum of the within mortgage, with interest to date of payment, at any time before the expiration of the period for which this mortgage is made. 10

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, and remainder and remainders, rents, issues and profits thereof.

AND ALSO, all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: To HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs or assigns, to his own proper use, benefit and behoof forever. 20

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, or its successors shall well and truly pay unto the said party of the second part, his heirs or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void. 30

AND the said party of the first part for itself and its successors shall well and truly pay unto 40

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the said party of the second part, his heirs or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof,
 10 that then these presents, and the estate hereby granted, shall cease, determine and be void.

AND the said party of the first part for itself and its successors does covenant and agree to pay unto the said party of the second part, his heirs or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of
 20 the first part, its successors and assigns, shall and will keep the buildings erected and to be erected, upon the lands above conveyed, insured against loss or damage by fire by insurers, and in an amount approved by the said party of the second part, his heirs or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part
 30 to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent per annum, from the time of payment of such premium or premiums.

AND THE SAID party of the first part, the owner of the lands above described, for itself, its successors and assigns, does further covenant and
 40 agree to and with the said party of the second

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part, his heirs and assigns, that it will pay in full, all taxes levied, or to be levied upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto. 10

AND the said mortgagor does covenant with the mortgagee that it is seized of an indefeasible estate in fee simple in said premises, and will warrant and forever defend the title thereof unto the mortgagee, his heirs and assigns, against all lawful claims whatsoever. 20

All of the covenants and conditions hereinabove contained shall be for the benefit of and shall apply to and bind the said parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the said party of the first part hath caused its corporate Seal to be hereto affixed and attested by its Secretary, and these presents to be signed by its President, the day and year first above written. 30

COLONIAL WOODWORKING CO.

By CARL GOLDBERG,
President.

Signed, Sealed and Delivered in
in the presence of

(SEAL)

Additional Amended Answer and Counter-claim.

Attested

By A. W. HOLDER,
Secretary.

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

BE IT REMEMBERED, that on this seventeenth day of September, in the year of our Lord One Thousand Nine Hundred and twenty-six before me the subscriber, AN ATTORNEY AT LAW OF NEW JERSEY, personally appeared ABE W. HOLDER, who being by me duly sworn on his oath, says that he is the Secretary of the COLONIAL WOODWORKING CO. INC. the
20 mortgagor named in the within instrument; that CARL GOLDBERG is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon sub-
30 scribed his name thereto as witness.

ABE W. HOLDER.

Sworn and subscribed before
me at Newark, N. J., the date
aforesaid.

LOUIS LEVY,
An Attorney-at-Law of New Jersey.

Additional Amended Answer and Counter-claim.

KNOW ALL MEN BY THESE PRESENTS THAT COLONIAL WOODWORKING CO., INC., a New Jersey corporation having its principal office in the City of Newark, in the County of Essex and State of New Jersey, is held and firmly bound unto HARRY KAPLAN of the City of Newark, in the County of Essex and State of New Jersey, in the penal sum of FORTY-EIGHT HUNDRED DOLLARS lawful money of the United States of America, to be paid to the said Harry Kaplan, his heirs, administrators or assigns, for which payment well and truly to be made it binds itself, its successors or assigns, firmly by these presents. Sealed with the Obligor's seal and dated the first day of September One Thousand Nine Hundred and twenty-six. 10

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bounden Colonial Woodworking Co. Inc., its successors or assigns, shall well and truly pay, or cause to be paid unto the above named Harry Kaplan, his heirs, administrators or assigns, the just and full sum of TWENTY-FOUR HUNDRED DOLLARS on the first day of September which will be in the year One Thousand Nine Hundred and twenty-eight, and the interest thereon, to be computed from the date hereof at and after the rate of six per cent. per annum, and to be paid semi-annually without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue. 20 30

AND IT IS HEREBY EXPRESSLY AGREED that should any default be made in the performance of any of the terms, covenants and conditions contained in the Mortgage accompanying this Bond (the said terms, covenants and conditions, and all matters and things contained in said 40

Additional Amended Answer and Counter-claim.

Mortgage being hereby made a part hereof as though particularly incorporated herein), or should any of the events or contingencies occur by reason of which the time for the payments of the said Mortgage matures as set forth therein, or should any default be made in the payment
10 of the said interest or any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the Mortgage accompanying this Bond, and become due and payable, and should the said interest remain unpaid or in arrears for the space of thirty days, or said tax, assessment, water rent or other
20 municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid or in arrear for the space of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of money, or so much thereof as may then remain unpaid, with all arrearages of interest thereon, shall, at the option of said obligee, or the legal representatives of the said obligee,
30 become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

The principal secured by this Bond, or any part thereof not less than Five Hundred Dollars, may be paid at any time before maturity, on any interest day herein reserved, upon thirty days' written notice to the holder of the mortgage accompanying this Bond.
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Additional Amended Answer and Counter-claim.

AND IT IS FURTHER EXPRESSLY AGREED that the said obligor shall not be entitled to and will not claim any credit on the interest payable on the Mortgage securing this Bond for taxes which may be levied upon the mortgaged premises, or for any part of said taxes.

COLONIAL WOODWORKING CO. INC.,

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By CARL GOLDBERG,
President.

Signed, Sealed and Delivered
in the presence of

Attested

By A. W. HOLDER,
Secretary.

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Colonial Woodworking Co. Inc.,

The obligor, as further collateral security for the mortgage debt hereby secured, hereby assigns to the obligee, Harry Kaplan, all its right, title and interest in and to the fifty shares of stock held by the West End Building and Loan Association, and upon the acquisition of the said premises by virtue of a foreclosure, the holder of the Mortgage accompanying this Bond, or the purchaser at foreclosure sale, shall be fully entitled to all the equity in said shares, and to have them transferred on the books of said Association in the name of the holder of said Mortgage, or purchaser, at the foreclosure sale.

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This assignment is, however, made subject to the lien of the said Association on said shares, by virtue of its being the holder of a Mortgage

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embracing the premises described in the Mortgage accompanying this Bond.

COLONIAL WOODWORKING CO. INC.

By CARL GOLDBERG,
President.

10 Attested

By A. W. HOLDER,
Secretary.

Service of a true copy of the within Additional Amended Answer and Counter-claim is hereby acknowledged the 19th day of Nov., 1930.

20 ROSSBACH & CRUMMY,
Solicitors for Complainant.

IN CHANCERY OF NEW JERSEY

79--144

Filed Dec. 9, 1930

30 Between
Frank R. Smith,
Complainant
and
Colonial Woodworking Co.,
Inc., a corporation, et als.,
Defendants

On Bill & c.
ORDER

40 This cause coming on to be heard in the presence of Rossbach & Crummy, Solicitors of Complainant, and Zucker & Goldberg, Solicitors of Defendants, and the matter having been argued on Complainant's motion to dismiss the Answer and Counterclaim of the Defendant,

IT IS ORDERED, ADJUDGED, AND DECREED that the Defendants' answer and counterclaim be dismissed and that the defendant Colonial have leave to file an amended answer within 20 days from Dec. 3, 1930.

Respectfully advised.

E. R. WALKER,

John H. Backes

C.

AMENDED ANSWER AND COUNTER-CLAIM.

Filed December 11, 1930.

IN CHANCERY OF NEW JERSEY.

79/144

<p><i>Between</i></p> <p>FRANK R. SMITH, Complainant,</p> <p>and</p> <p>COLONIAL WOODWORKING Co., INC., a corporation, <i>et als.</i>, Defendants.</p>	}	<p><i>On Bill, &c.</i></p> <p><i>Amended</i></p> <p><i>Answer and</i></p> <p><i>Counter-</i></p> <p><i>claim of the</i></p> <p><i>Defendant,</i></p> <p><i>Colonial</i></p> <p><i>Woodwork-</i></p> <p><i>ing Co. Inc.,</i></p> <p><i>By Leave of</i></p> <p><i>Court.</i></p>	<p>10</p> <p>20</p>
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By order of the Chancellor, on the advice of the Honorable John H. Backes, Vice-Chancellor, granting this defendant leave to amend.

The answer of the defendant, Colonial Woodworking Co. Inc., a corporation, and the counter-claim of Colonial Woodworking Co. Inc., a corporation, against the complainant, Frank R. Smith, and the defendants, Julius Joachimsthal and Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, which last named defendant is made a party to these proceedings by the Colonial Woodworking Co. Inc.

This defendant, Colonial Woodworking Co. Inc., answering the bill of complaint, says that:

1. Paragraphs one to nine, inclusive, are admitted.

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Amended Answer and Counter-claim.

2. Paragraph ten is admitted, with the reservation, however, that this defendant claims that by reason of the facts set forth in the counter-claim hereinafter, the said sum of money for which the said Angelo M. Ruggiero recovered a judgment against the Colonial
10 Woodworking Co. Inc., was in fact the debt of Julius Joachimsthal, one of the defendants herein, and should be paid by him, and that failure of the said Julius Joachimsthal to pay said debt due and owing by him and said debt becoming due from the defendant, Colonial Woodworking Co. Inc., because of said fact, is a debt which is a proper set-off against any claim against Colonial Woodworking Co. Inc. for moneys due
20 from this defendant to the complainant herein, and for greater details and explanation of said claim on the part of this defendant, this defendant begs leave to refer to the counter-claim hereinafter following.

3. Paragraph eleven is admitted.

4. As to paragraph twelve, this defendant admits that the matured date on the complainant's bond and mortgage has arrived, but that
30 by reason of the facts as set forth in the counter-claim hereinafter set forth, this defendant is entitled to set-offs against the amount due from this defendant to the complainant on the aforementioned mortgage.

5. The assignment recited in paragraph six of the bill of complaint is subject to any set-offs, counter-claims or defenses which the defendant, Colonial Woodworking Co. Inc., may have
40 against the said Julius Joachimsthal.

Amended Answer and Counter-claim.

6. The assignment recited in paragraph seven of the bill of complaint is subject to any set-offs, counter-claims or defenses which the defendant, Colonial Woodworking Co. Inc., may have against the said Julius Joachimsthal.

COUNTER-CLAIM

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By way of counter-claim against the complainant, and Julius Joachimsthal, as defendant, and Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, the defendant, Colonial Woodworking Co. Inc., says that:

1. During the month of March, 1927, the defendant, Julius Joachimsthal and Emma Joachimsthal, his wife, were the owners of the premises described in the third paragraph of the bill of complaint. 20

2. During the month of March, 1927, the defendant, Colonial Woodworking Co. Inc., was the owner of the following premises:

A. Premises commonly known and designated as No. 231 Wainwright street, Newark, New Jersey.

B. Premises commonly known and designated as No. 244 Wainwright street, Newark, New Jersey. 30

3. During March, 1927, the defendant, Colonial Woodworking Co. Inc. entered into an agreement with the defendant, Julius Joachimsthal and his wife, Emma Joachimsthal, to purchase from them the premises described in paragraph three of the bill of complaint, and agreed to pay to the said Julius Joachimsthal and Emma Joachimsthal, his wife, for said premises, the sum of \$20,000.00. 40

Amended Answer and Counter-claim.

4. At the same time that said agreement was made between the defendant, Julius Joachimsthal, and Emma Joachimsthal, his wife, to sell said premises to the defendant, Colonial Woodworking Co. Inc., the said Julius Joachimsthal and Emma Joachimsthal, his wife, agreed to purchase from the Colonial Woodworking Co. Inc., the two parcels of land and premises, which were owned by the defendant, Colonial Woodworking Co. Inc., and known as No. 231 Wainwright street, Newark, New Jersey, and No. 244 Wainwright street, Newark, New Jersey, and they agreed to pay to the Colonial Woodworking Co. Inc. for said premises, the sum of \$30,000.00.

5. The aforementioned agreements were reduced to writing, signed by the parties, and a copy of the same is annexed hereto and made a part hereof, and marked Schedule A.

6. The defendant, Julius Joachimsthal, and Emma Joachimsthal, his wife, agreed to pay to the Colonial Woodworking Co. Inc. the afore-said sum of \$30,000, as follows:

By having applied against the purchase price for the said premises at Nos. 231 and 244 Wainwright street, Newark, New Jersey, the encumbrances which were against said properties, to wit:

A first mortgage of \$10,000, and a second mortgage of \$2,500.00, against premises 231 Wainwright street, Newark, New Jersey.

A first mortgage of \$12,000, and a second mortgage of \$2,500.00, against premises 244 Wainwright street, Newark, New Jersey.

And after receiving credit for said sums and deducting the amount due upon said encum-

Amended Answer and Counter-claim.

brances from the said sum of \$30,000, the balance then due for the sale of the said premises at Nos. 231 and 244 Wainwright street, Newark, New Jersey, from the said Julius Joachimsthal and Emma Joachimsthal, his wife, to Colonial Woodworking Co. Inc., shall be applied against the purchase price of the premises described in paragraph three of the bill of complaint from the said defendants, Julius Joachimsthal and Emma Joachimsthal, his wife, as more fully set forth in said contract annexed hereto and marked Schedule A. 10

7. As part and parcel of said contract, and as a result thereof, and in consummation of the contract referred to herein, the mortgage being foreclosed by the complainant was executed by the defendant, Colonial Woodworking Co. Inc., to the said Julius Joachimsthal. 20

8. On the 8th day of April, 1927, the defendant, Colonial Woodworking Co. Inc., in accordance with the terms of said agreement hereinbefore referred to, executed a Warranty Deed to Julius Joachimsthal, the defendant herein, conveying to the said Julius Joachimsthal, the said two tracts of land known as Nos. 231 and 244 Wainwright street, Newark, New Jersey, and as provided in the agreement aforesaid, allowed to the said Julius Joachimsthal as a payment on account of the \$30,000 which he agreed to pay to the defendant, Colonial Woodworking Co. Inc. for the conveyance of the premises known as Nos. 244 and 231 Wainwright street, Newark, New Jersey, the amount due on the respective mortgages which affected said premises, and which are referred to in said agreement aforesaid, and which amounts were as follows: 30 40

Amended Answer and Counter-claim.

Premises 231 Wainwright street, Newark, New Jersey, the sum of \$10,000 due to the West End Building and Loan Association of the City of Newark, and the sum of \$2,400 due to one Harry Kaplan.

10 Premises 244 Wainwright street, Newark, New Jersey, the sum of \$12,000 due to the Manhattan Building and Loan Association of the City of Newark, and the sum of \$2,307.14 due to Angelo Ruggiero.

And which express mortgages are recited in said deed, a copy of which deed is annexed hereto and marked Schedule B.

20 9. The said deed marked Schedule B was on April 25, 1927, delivered to the defendant, Julius Joachimsthal, and as recited by said deed, was recorded on April 27, 1927, in Book E-76 of Deeds for Essex County, on page 489.

30 10. The said Julius Joachimsthal entered into possession of the said premises mentioned in said deed, collected the rents, issues and profits therefrom, and at all times thereafter, peaceably and quietly, had, held, used, occupied, possessed and enjoyed said premises, without any let, suit, trouble, molestation, eviction or disturbance on the part of the Colonial Woodworking Co. Inc.

11. Angelo Ruggiero held a second mortgage on the premises known as No. 244 Wainwright street, Newark, New Jersey, which second mortgage was executed together with a bond, by the defendant, Colonial Woodworking Co. Inc., and a credit for the amount due upon said mortgage was given to the defendant, Julius Joachimsthal, as hereinbefore recited, in lieu of his payment

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Amended Answer and Counter-claim.

of said sum when he purchased premises covered by said mortgage.

12. The said Julius Joachimsthal, and his successors to the title to the premises, which are covered by said mortgage, failed to comply with the terms of said mortgage, and the mortgagee instituted foreclosure proceedings in this Court by reason of which proceedings, the Sheriff of the County of Essex at a sale held by virtue of the Writ of Fieri Facias directed to him by this Honorable Court, sold the premises covered by said mortgage, and deficiency resulted from said sale, so that the said Angelo Ruggiero did not receive the amount due him on said mortgage. 10

13. The said Angelo Ruggiero thereupon filed suit for the deficiency on his said mortgage, and the bond which accompanied the same, against the defendant, Colonial Woodworking Co. Inc., in the Essex County Circuit Court, and did on September 24, 1929, recover and enter a judgment against Colonial Woodworking Co. Inc. for the sum of \$2,498.42, which judgment is filed in Book 108 of Circuit Court Judgments for Essex County, page 359, and which judgment is now a lien upon the real estate of the defendant, Colonial Woodworking Co. Inc., and which judgment the Colonial Woodworking Co. Inc. is required to pay. 20 30

14. The said Harry Kaplan held a second mortgage on the premises known as No. 231 Wainwright street, Newark, New Jersey, in the sum of \$2,400.00, which second mortgage was executed together with the bond, by the defendant, Colonial Woodworking Co. Inc. and a credit for the amount due upon said mortgage was 40

Amended Answer and Counter-claim.

given to the defendant, Julius Joachimsthal, as hereinbefore recited, and which mortgage, by mesne assignments, was assigned to the Southern Lumber Company, a corporation of New Jersey.

10 15. The said premises described in the said mortgage held by Harry Kaplan, formerly, was subrogated to a first mortgage in the sum of \$10,000 held by the West End Building and Loan Association of the City of Newark.

20 16. The West End Building and Loan Association instituted foreclosure proceedings on its said mortgage, and by reason thereof, the premises covered by said mortgage were sold by the Sheriff of the County of Essex, and no sum was realized over and above the amount due on said mortgage of the West End Building and Loan Association.

30 17. The Southern Lumber Company, being the holder of the mortgage and bond, which were executed by this defendant, then threatened this defendant with suit unless this defendant paid to the Southern Lumber Company, the amount due on said bond and mortgage, and this defendant, having no defense to the payment of the same, and being in duty bound to pay said mortgage, did pay and satisfy the same, and did pay the sum of \$2,400.00 with interest to the said mortgagee, the Southern Lumber Company.

40 18. On September 24, 1926, this defendant, being indebted unto Saul Rubin, Charles M. Neiss and Angelo M. Ruggiero in the sum of \$2,307.14, executed and delivered to them, under its seal, a bond in double said amount, and to secure payment of the said bond, executed to the said Saul Rubin, Charles M. Neiss and Angelo

Amended Answer and Counter-claim.

M. Ruggiero, a mortgage in the sum of \$2,307.14, which mortgage encumbers certain premises in the City of Newark, County of Essex and State of New Jersey, a true copy of which mortgage is attached hereto and made a part hereof, and which mortgage, in addition to other terms therein specified and contained, includes the following provision: 10

“The entire amount of this mortgage is to be due and payable in two years from the date hereof, which will be on the 24th day of September, 1928.”

19. Said mortgage was acknowledged on September 24, 1926, and the certificate of acknowledgement attached thereto and was recorded on October 2, 1926, in the Register's Office of Essex County in Book C-59 of Mortgages for said county, pages 184-186. 20

20. Subsequently, by deed of assignment dated December 8, 1926, Saul Rubin and Charles M. Neiss sold, assigned and transferred unto Angelo M. Ruggiero their interest in and to said mortgage, and therein represented that the full sum of \$2,307.14 was due and payable, with interest from September 24, 1926, which assignment, having been acknowledged on December 8, 1926, and the certificate of acknowledgment attached thereto, was recorded on December 9, 1926, in Book 184 of Assignments for Essex County, page 543, a true copy of said assignment being attached hereto, as well as a true copy of the said bond. 30

21. That by the terms of the said bond and mortgage, the debt matured, and the amount due thereon became due and payable on September 24, 1928. 40

Amended Answer and Counter-claim.

22. On September 1, 1926, this defendant, being indebted unto Harry Kaplan in the sum of \$2,400, executed and delivered to him a bond in the penal sum of \$4,800, and to secure said bond, executed and delivered to him, a mortgage in the sum of \$2,400, a true copy of the said mortgage being attached hereto and made a part hereof. Said mortgage contained the following express provision:

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“This mortgage is second and subsequent to a mortgage in the sum of \$10,000 held by the West End Building and Loan Association of Newark, N. J., and it is agreed that should the said party of the first part, its successors and assigns make default in the monthly payment of principal or interest on the mortgage held by the said building and loan association, and should said default continue for a space of two months, then in that event, the amount due on this mortgage is to become due and payable at once at the option of the said party of the second part, his heirs, administrators or assigns.”

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which mortgage, having been acknowledged, on September 17, 1926, and the certificate of acknowledgment attached thereto, was recorded on September 21, 1926, in the Register's Office of Essex County in Book I-58 of Mortgages for said county, on pages 595-597, and which mortgage by its terms matured and became due and payable on September 1, 1928.

23. Southern Lumber Co., a corporation, the owner thereof, by assignment of mortgage dated December 29, 1927, and recorded on December

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Amended Answer and Counter-claim.

30, 1927, in Book 193 of Assignments for Essex County, page 465.

24. During the months of May, June, July, August and September, 1928, the owner of the premises encumbered by said mortgage, refused, refrained and neglected from paying monthly dues and interest to the prior mortgagee, the building and loan association, and on or about September 18, 1928, the West End Building and Loan Association declared a default to exist in the terms of the said mortgage and caused a bill to foreclose to be filed in this Honorable Court, and on September 19, 1928, filed a *Lis Pendens* in the Register's Office of Essex County in Book L of *Lis Pendens* for said county, on page 39, and made the Southern Lumber Co. a party defendant to said suit.

25. By reason of the aforesaid, the payment of the debt due Southern Lumber Co. was accelerated and the said debt matured, as of the date of the default in the terms of the West End Building and Loan Association mortgage. Also the semi-annual payment of interest, which was due on or before March 1, 1928, remained due and unpaid, so that the Southern Lumber Co. declared a default to exist and demanded payment of the principal sum and accrued interest due it on the said mortgage.

26. The mortgage under foreclosure by the complainant, which was originally held by the defendant, Julius Joachimsthal, was assigned by him to the Federal Trust Company (Springfield Avenue Branch) by deed of assignment dated October 1, 1928, acknowledged on Oc-

Amended Answer and Counter-claim.

tober 1, 1928, and recorded on October 2, 1928, in Book 201 of Assignments of Mortgages for Essex County, page 570.

10 27. This defendant, Colonial Woodworking Co. Inc. has, since the filing by the complainant of his bill of complaint to foreclose his said mortgage, paid and satisfied the judgment of Angelo M. Ruggiero recovered by him against this defendant by settling and compromising the same for the sum of Twenty-five Hundred and Twenty-five Dollars (\$2525.00).

20 28. By reason of the failure of the said defendant, Julius Joachimstahl, to pay the aforesaid two mortgages, this defendant was required and was called upon to pay same, and did pay same, and did spend large sums of money for the purpose of defending itself, and for the arranging for proper releases and satisfactions upon its making payment of the amount of moneys which it was compelled to pay as a result of the defendant, Julius Joachimsthal, failing to do what he was in duty bound to do.

30 29. This defendant called upon the said Julius Joachimsthal to pay the amounts which it was required to pay, but the said Julius Joachimsthal refused to pay same.

40 30. When the said Julius Joachimsthal purchased the premises known as Nos. 231 and 244 Wainwright street, Newark, New Jersey, from this defendant, and was allowed as against his agreed purchase price for the same, the amount due on the mortgage encumbrances affecting said premises, and accepted a conveyance of the same with such allowances as recited in the deed marked Schedule B annexed hereto, he was

Amended Answer and Counter-claim.

charged with the said mortgage debt and assumed the payment of the debts effectually as if he had executed the mortgage.

31. The said Julius Joachimsthal, on purchasing the premises known as Nos. 231 and 244 Wainwright street, Newark, New Jersey, and in agreeing to pay for the same the sum of \$30,000 and receiving a reduction in the said price for the amount due on the mortgage encumbrances affecting said premises, became liable for the amount of said encumbrances upon which failure to pay same when said debt matured.

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32. By reason of the aforesaid facts, this defendant is entitled to be reimbursed for the amount which it was required to pay on the mortgages, allowances for which were given to the said Julius Joachimsthal when he purchased the aforementioned premises, and that because of his failure to pay same and because of the fact that this defendant was required to pay same, this defendant is entitled to receive a credit for said sum against the amount due the complainant herein on the mortgage recited in the bill of complaint held by the complainant, including interest, costs, counsel fees and other expenses.

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33. The defendant, Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, when it took an assignment of the mortgage therein recited, took said mortgage subject to any defenses which the grantor therein named had or may have against the mortgagee therein named, and this defendant is advised and verily believes same to be true, that the complainant herein holds said assignment of mortgage in trust and for the benefit of Federal Trust Company

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Amended Answer and Counter-claim.

(Springfield Avenue Branch), Newark, New Jersey, and therefore this defendant expressly alleges that the Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, is the true and lawful owner of the said assignment, and the bond and mortgage upon which this suit is brought, and that any claim to any portion of the money due under said bond and mortgage held by the complainant, is subject to the claim of this defendant as against the said Julius Joachimsthal, as well as against the complainant and the other defendant, particularly so because the debts of this defendant, Colonial Woodworking Co. Inc., matured and were due and payable prior to the assignment of the mortgage by the defendant, Julius Joachimsthal, to the defendant, Federal Trust Company (Springfield Avenue Branch), which in turn assigned said bond and mortgage to this complainant.

34. This defendant was and still is ready willing, and able, upon proper allowance and deductions as it is by law entitled to by reason of the facts alleged in this counter-claim, to pay any balance justly due on account of the within mortgage, less such amount as shall be ascertained to be due this defendant in good conscience and in accordance with equity.

35. All of the defendants in this suit, as well as the Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, at all times knew of the existence of this counter-claim of this defendant, and this defendant was at all times ready, willing and able to, and offered to pay the difference between the amount due on the mortgage and its set-off and counter-claim, but the defendants have refused such offer.

Amended Answer and Counter-claim.

This defendant, Colonial Woodworking Co. Inc., therefore prays:

1. That the complainant herein, and the defendant, Julius Joachimsthal, as well as the Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, which is hereby impleaded, may answer this counter-claim and each statement herein made. 10

2. That the defendants may be decreed to pay or make a proper allowance to this defendant for the amounts found due, with interest and costs, by a short day to be appointed by this Court, and that in default of such payment, that a decree may be entered, ordering, adjudging and decreeing, that such moneys, so found to be due this defendant, may be applied for and used towards the reduction of the mortgage under foreclosure. 20

3. That a writ of subpoena may issue, commanding the defendants, Julius Joachimsthal and Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, to answer this amended answer and counter-claim, and to abide by such decree as this Court may make in the premises. 30

4. That upon ascertaining the amount due this complainant and the amount due this defendant, Colonial Woodworking Co. Inc., by reason of this counter-claim and such accounting, the same may be credited on said mortgage debt, and if the amount so found due this defendant shall exceed the amount of such mortgage debt, then, that the complainant, and the defendants, Julius Joachimsthal and Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, may be 40

Amended Answer and Counter-claim.

decreed to pay to this defendant the excess, including costs and expenses.

5. That this defendant shall and may have such other and further relief as shall be just and equitable in the premises, and agreeable to equity.

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ZUCKER & GOLDBERG,
Solicitors for Defendant, Colonial
Woodworking Co. Inc.

12/5/30

Service of a true copy of the within instrument is hereby acknowledged this 9th day of Dec., 1930.

ROSSBACH & CRUMMY,
Solicitors for Complainant.

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Schedule A same as Contract on page 27.

Schedule B same as Mortgage on page 69.

Schedule C see Mortgage, page 84.

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REPLICATION.

Filed December 19, 1930.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>FRANK R. SMITH, <i>Complainant,</i> <i>and</i> COLONIAL WOODWORKING Co., INC., a corporation, <i>et als.</i>, <i>Defendants.</i></p>	}	<p>10</p> <p><i>On Bill, &c.</i></p> <p><i>Replication.</i></p>
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Complainant joins issue on the answer of the defendant. 20

As to the counter-claim contained in said answer complainant says:

1. Paragraph 1 is admitted.
2. Paragraph 2 and the subdivision thereof are admitted.
3. As to paragraphs 3 and 4 complainant begs to refer to the agreement in writing between the parties, attached to the papers on file. 30

4. Paragraph 5 is admitted with the qualification that the agreement referred to was attached to the papers heretofore filed.

5. As to paragraph 6 complainant begs to refer to the agreement in writing between the parties attached to the papers filed in the cause and referred to in paragraph 5 of the defendant's counter-claim.

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Replication.

6. As to paragraph 7 it is admitted that the mortgage being foreclosed was executed by the defendant to the said Julius Joachimsthal in pursuance to the written contract.

10 7. As to paragraph 8 it is admitted that the defendant, Colonial Woodworking Co. Inc., a corporation, in accordance with the terms of the agreement, executed a warranty deed to Julius Joachimsthal to premises 244-231 Wainwright street, in the City of Newark, and that said premises were taken subject to the mortgages referred to in the counter-claim. The remainder of the paragraph is denied.

8. Paragraphs 9 and 10 are admitted.

20 9. As to the execution of the mortgage to Angelo Ruggiero by the defendant, Colonial Woodworking Co. Inc., a corporation, covering property 244 Wainwright street, as alleged in paragraph 11 of defendant's counter-claim, complainant has no knowledge or information sufficient to form a belief. The remainder of the paragraph is denied.

10. The complainant has no knowledge or information sufficient to form a belief as to paragraphs 12 and 13.

30 11. As to paragraph 14, complainant has no knowledge or information sufficient to form a belief as to the execution and delivery of a second mortgage to Harry Kaplan and the assignment thereof to the Southern Lumber Co. The remainder of the paragraph is denied.

12. The complainant has no knowledge or information sufficient to form a belief as to paragraphs 15, 16, 17, 18, 19 and 20.

40 13. Paragraph 21 is denied.

Replication.

14. The complainant has no knowledge or information sufficient to form a belief as to paragraphs 22, 23 and 24.

15. Paragraph 25 is denied.

16. Paragraph 26 is admitted.

17. The complainant has no knowledge or information sufficient to form a belief as to paragraph 27. 10

18. Paragraph 28 is denied.

19. The complainant has no knowledge or information sufficient to form a belief as to paragraph 29.

20. Paragraphs 30, 31, 32 and 33 are denied.

21. The complainant has no knowledge or information sufficient to form a belief as to paragraph 34. 20

22. Paragraph 35 is denied.

Complainant took said mortgage and the Federal Trust Company (Springfield Avenue Branch), a corporation, took said mortgage from the defendant, Julius Joachimsthal, as security for the payment of debts and holds said mortgage for the full amount thereof to secure it against notes given to the said Federal Trust Company (Springfield Avenue Branch) by the said Julius Joachimsthal to an amount in excess of the amount of the mortgage without notice of any defect, off-set or counter-claim to the mortgage and before the maturity of the alleged claims constituting the basis of the counter-claim 30

Replication.

of the defendant, Colonial Woodworking Co. Inc.,
a corporation.

ROSSBACH & CRUMMY,
Solicitors for Complainant.

10 Service of the within Replication acknowledged
this 17th day of December, 1930.

ZUCKER & GOLDBERG,
Solicitors for Defendant, Colonial
Woodworking Co. Inc.

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Answer of Federal Trust Company.

7. As to paragraph 8 it is admitted that the defendant, Colonial Woodworking Co. Inc., a corporation, in accordance with the terms of the agreement, executed a warranty deed to Julius Joachimsthal to premises 244-231 Wainwright street, in the City of Newark, and that said premises were taken subject to the mortgages referred to in the counter-claim. The remainder of the paragraph is denied.

8. Paragraphs 9 and 10 are admitted.

9. As to the execution of the mortgage to Angelo Ruggiero by the defendant, Colonial Woodworking Co. Inc., a corporation, covering property 244 Wainwright street, as alleged in paragraph 11 of the defendant's counter-claim, this defendant has no knowledge or information sufficient to form a belief. The remainder of the paragraph is denied.

10. This defendant has no knowledge or information sufficient to form a belief as to paragraphs 12 and 13.

11. As to paragraph 14, this defendant has no knowledge or information sufficient to form a belief as to the execution and delivery of a second mortgage to Harry Kaplan and the assignment thereof to the Southern Lumber Co. The remainder of the paragraph is denied.

12. This defendant has no knowledge or information sufficient to form a belief as to paragraphs 15, 16, 17, 18, 19 and 20.

13. Paragraph 21 is denied.

14. The defendant has no knowledge or information sufficient to form a belief as to paragraphs 22, 23 and 24.

15. Paragraph 25 is denied.

16. Paragraph 26 is admitted.

Answer of Federal Trust Company.

17. This defendant has no knowledge or information sufficient to form a belief as to paragraph 27.

18. Paragraph 28 is denied.

19. This defendant has no knowledge or information sufficient to form a belief as to paragraph 29. 10

20. Paragraphs 30, 31, 32 and 33 are denied.

21. This defendant has no knowledge or information sufficient to form a belief as to paragraph 34.

22. Paragraph 35 is denied.

Defendant, Federal Trust Company (Springfield Avenue Branch), a corporation, to said mortgage from the defendant, Julius Joachimsthal, as security for the payment of debts and holds said mortgage for the full amount thereof to secure it against notes given to the said Federal Trust Company (Springfield Avenue Branch) by the said Julius Joachimsthal to an amount in excess of the amount of the mortgage without notice of any defect, off-set or counter-claim to the mortgage and before the maturity of the alleged claims constituting the basis of the counter-claim of the defendant, Colonial Woodworking Co., Inc., a corporation. 20 30

ROSSBACH & CRUMMY,
Solicitors for the Defendant, Federal Trust
Company (Springfield Avenue Branch).

Service of the within Answer acknowledged this 17th day of December, 1930.

ZUCKER & GOLDBERG,
Solicitors for Defendant, Colonial
Woodworking Co. Inc. 40

ANSWER OF JULIUS JOACHIMSTHAL.

Filed December 19, 1930.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">FRANK R. SMITH, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">COLONIAL WOODWORKING Co., INC., a corporation, <i>et als.,</i> <i>Defendants.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Answer of</i></p> <p><i>Julius</i></p> <p><i>Joachimsthal.</i></p>
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20 This defendant, answering the counter-claim of the defendant, Colonial Woodworking Co., Inc., a corporation, says that:

1. Paragraph 1 is admitted.
2. Paragraph 2 and the subdivisions thereof are admitted.
3. As to paragraphs 3 and 4 defendant begs to refer to the agreement in writing between the parties, attached to the papers on file.
- 30 4. Paragraph 5 is admitted with the qualification that the agreement referred to was attached to the papers heretofore filed.
5. As to paragraph 6, this defendant begs leave to refer to the agreement in writing between the parties, attached to the papers on file, for the memo of his agreement with the defendant.
6. Paragraph 7 is admitted insofar as it says that the mortgage being foreclosed was executed by the defendant, Colonial Woodworking Co., Inc. to this defendant, and the said mortgage was

Answer of Julius Joachimsthal.

executed in pursuance to the contract in writing between the parties.

7. Paragraph 8 is admitted insofar as it says that the defendant, Colonial Woodworking Co., Inc. executed a warranty deed to Julius Joachimsthal to the premises referred to in said paragraph and the said premises were taken subject to the mortgages referred to in the counter-claim. The remainder of the paragraph is denied.

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8. Paragraphs 9 and 10 are admitted.

9. This defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11.

10. This defendant has no knowledge or information sufficient to form a belief as to paragraphs 12 and 13.

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11. As to paragraph 14, this defendant has no knowledge or information sufficient to form a belief as to the execution and delivery of a second mortgage to Harry Kaplan and the assignment thereof to the Southern Lumber Co. The remainder of the paragraph is denied.

12. This defendant has no knowledge or information sufficient to form a belief as to paragraphs 15, 16, 17, 18, 19 and 20.

13. Paragraph 21 is denied.

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14. This defendant has no knowledge or information sufficient to form a belief as to paragraphs 22, 23 and 24.

15. Paragraph 25 is denied.

16. Paragraph 26 is admitted.

17. This defendant has no knowledge or information sufficient to form a belief as to paragraph 27.

18. Paragraph 28 is denied.

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Answer of Julius Joachimsthal.

19. The defendant has no knowledge or information sufficient to form a belief as to paragraph 29.

20. Paragraphs 30, 31, 32 and 33 are denied.

10 21. This defendant has no knowledge or information sufficient to form a belief as to paragraph 34.

22. Paragraph 35 is denied.

SAMUEL SHAPIRO,
Solicitor for Defendant, Julius Joachimsthal.

Service of the within Answer acknowledged this 17th day of December, 1930.

20 ZUCKER & GOLDBERG,
Solicitors for Defendant,
Colonial Woodworking Co. Inc.

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REPLICATION.

Filed February 25, 1931.

IN CHANCERY OF NEW JERSEY.

79/144

<i>Between</i> FRANK R. SMITH, <i>Complainant,</i> <i>and</i> COLONIAL WOODWORKING Co. INC., a corporation, <i>et als.,</i> <i>Defendants.</i>	}	<i>On Bill, &c.</i> <i>Replication</i> <i>of Defend-</i> <i>ant, Colonial</i> <i>Woodwork-</i> <i>ing Co. Inc.</i>	10
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The defendant, Colonial Woodworking Co. Inc., joins issue in the answer filed on behalf of the complainant, to the counter-claim of this defendant.

ZUCKER & GOLDBERG,
Solicitors for Defendant,
Colonial Woodworking Co. Inc.

2/4/31.

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REPLICATION.

Filed February 25, 1931.

IN CHANCERY OF NEW JERSEY.

79/144

10

Between

FRANK R. SMITH,
Complainant,
and

COLONIAL WOODWORKING CO.
 INC., a corporation, *et als.*,
Defendants.

On Bill, &c.
Replication
of Defend-
ant, Colonial
Woodwork-
ing Co. Inc.

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The defendant, Colonial Woodworking Co. Inc., joins issue in the answer filed on behalf of Julius Joachimsthal, to the counter-claim of this defendant.

ZUCKER & GOLDBERG,
 Solicitors for Defendant,
 Colonial Woodworking Co. Inc.

2/24/31.

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REPLICATION.

Filed February 25, 1931.

IN CHANCERY OF NEW JERSEY.

79/144

10

Between

FRANK R. SMITH,
Complainant,
and
 COLONIAL WOODWORKING Co.
 INC., a corporation, *et als.,*
Defendants.

On Bill, &c.
Replication
of Defendant,
Colonial
Woodwork-
ing Co. Inc.

The defendant, Colonial Woodworking Co. Inc., joins issue in the answer filed on behalf of the Federal Trust Company, Springfield Avenue Branch, to the counter-claim of this defendant.

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ZUCKER & GOLDBERG,
 Solicitors for Defendant,
 Colonial Woodworking Co. Inc.

2/24/31.

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ORDER OF REFERENCE.

Filed December 23, 1930.

79/144

IN CHANCERY OF NEW JERSEY.

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Between

FRANK R. SMITH,

*Complainant,**and*

COLONIAL WOODWORKING Co.,

INC., a corporation, *et als.*,*Defendants.**On Bill, &c.**Order of
Reference.*

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It is on this 23rd day of December, 1930, on motion of Rossbach & Crummy, solicitors for the complainant,

ORDERED, that the above-entitled cause be referred to the Honorable J. H. Backes one of the Vice-Chancellors of this court, to hear the same for the Chancellor, and report thereon to him, and advise what order or decree should be made therein.

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E. R. WALKER,

C.

We hereby consent to the entry of the above order.

ZUCKER & GOLDBERG,

Solicitors for Defendant,

Colonial Woodworking Co., Inc., a corporation.

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STIPULATION AS TO FACTS.

Filed June 3, 1931.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	}		10	
FRANK R. SMITH,				
<i>Complainant,</i>			<i>On Bill, &c.</i>	
<i>and</i>			<i>Stipulation</i>	
COLONIAL WOODWORKING Co.,			<i>as to Facts.</i>	
INC., a corporation, <i>et als.,</i>				
<i>Defendants.</i>				

It is hereby stipulated between the parties that: 20

1. The second mortgages on the properties conveyed to Julius Joachimsthal came due respectively on September 24, 1928, and September 1, 1928.

2. The mortgage given by the Colonial Woodworking Co., Inc., a corporation to Julius Joachimsthal, the subject matter of the foreclosure suit, was assigned to the Federal Trust Company (Springfield Avenue Branch), a corporation on October 1, 1928. 30

3. The Colonial Woodworking Co., Inc., a corporation, paid \$2,525.00 on account of the second mortgage held by Angelo Ruggiero, and \$2,544.00 on account of the second mortgage held by Southern Lumber Company, the first amount was paid October 16, 1930, and the second amount was paid September 15, 1928.

Stipulation as to Facts.

4. The amount of \$14,000.00 with interest from October 8, 1929, is due on complainant's mortgage.

10 5. The first mortgage on the properties conveyed to Julius Joachimsthal were foreclosed and nothing realized on the second mortgages.

6. The contract between Julius Joachimsthal and the Colonial Woodworking Co., Inc., a corporation, and the deeds between the parties are represented by copies annexed to the papers.

7. It is admitted that the valuations for the purpose of the exchange from one party to the other are as stated in the contract, and that the prices so stated represent the true values at the date of the said contract.

20 8. Demand for the payment of both second mortgages was made on the due dates of the mortgages.

9. Julius Joachimsthal conveyed the properties conveyed to him by the Colonial Woodworking Co., Inc., a corporation, to the Wainwright Realty Company on August 11, 1927, the deed to Julius Joachimsthal having been dated April 8, 1927.

30 10. It is agreed between the parties that all copies of instruments annexed to the various pleadings, and papers filed in this cause be considered part and parcel of this stipulation of facts.

ERRATUM

Comma after the word pleadings in paragraph 10 of Stipulation of Facts page 26 of State of Case is to be deleted.

11. It is agreed between the parties that the copy of the closing statement attached hereto

Stipulation as to Facts.

of the transaction of exchange of the properties
is a true copy.

ROSSBACH & CRUMMY,
Solicitors for Complainant.

ZUCKER & GOLDBERG,
Solicitors for Defendant, 10
Colonial Woodworking Co., Inc.

SAMUEL SHAPIRO,
Solicitor for Julius Joachimsthal.

To closing of title between Julius Joachimsthal and Colonial Woodworking Co. on premises 231 and 244 Wainright street, Newark, New Jersey as of April 1, 1927.		20
Purchase price	\$30,000.00	
Back shares Statement..\$ 630.00		
Manhattan B & L April... 60.00	690.00	
	<hr/>	
Back shares Statement..\$ 672.04		
West End B & L April... 50.00	722.04	
	<hr/>	
Int. allowance on Manhattan	22.00	30
Int. allowance on West End	29.70	
Ins. 244 Wainright.....\$12,000.00	43.60	
“ “ 6,000.00	26.20	
“ “ P. L.....	20.60	
Ins. 231 Wainright.....\$10,000.00	17.00	
“ “ 4,000.00	16.50	
“ “ P. L.....	12.00	
	<hr/>	
	\$31,599.64	40

Stipulation as to Facts.

	Credits		
	B. & L. West End.....	\$10,000.	
	B. & L. Manhattan.....	\$12,000.	
	Second mortgage	2,307.14	
	Interest	2.35	
	Second mortgage.....	2,400.00	
10	Interest	12.00	
	Tax adjustments 231.....	85.28	
	Tax adjustments 244.....	119.40	
	Water adjustments b. h...	9.00	
	Ret. April	295.00	
	Equity	4,369.47	
		<hr/>	
		\$31,599.64	\$31,599.64
	To closing of title between Julius Joachimsthal and		
20	Colonial Woodworking Co. on property of Lehigh Railroad, Cortier street, as of April 1, 1927.		
	Purchase price		\$20,000.00
	P. M. Mortgage	\$14,000.	
	Tax adjustments	72.21	
	Equity	5,927.79	
		<hr/>	
		\$20,000.00	\$20,000.00
30	Joachimsthal equity	\$5,927.79	
	Colonial Woodworking Co. equity	4,369.47	
		<hr/>	
	By note	\$1,558.32	

STIPULATION.

Filed August 27, 1931.

IN CHANCERY OF NEW JERSEY.

79/144

<p><i>Between</i></p> <p>FRANK R. SMITH, <i>Complainant,</i> <i>and</i> COLONIAL WOODWORKING Co. INC., a corporation, <i>et als.,</i> <i>Defendants.</i></p>	}	<p><i>On Bill, &c.</i> <i>Stipulation.</i></p>	<p>10</p>
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It is hereby stipulated and agreed by and between Rossbach and Crummy, Esquires, solicitors for complainant, who are also the solicitors for the defendants, Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, and Zucker & Goldberg, Esquires, solicitors for defendant, Colonial Woodworking Co. Inc., that all copies of documents or instruments heretofore filed or attached to any pleadings shall be for all intents and purposes considered as having been filed and/or attached to the amended answer and counter-claim of the defendant, Colonial Woodworking Co. Inc., as well as any subsequent

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Stipulation.

pleadings which may be filed by either the complainant or any of the defendants.

10 ROSSBACH & CRUMMY,
Solicitors for Complainant, and also for the
Defendant, Federal Trust Company
(Springfield Avenue Branch).

ZUCKER & GOLDBERG,
Solicitors for Defendant,
Colonial Woodworking Co. Inc.

12/8/30

Service of a true copy of the within Instrument is hereby acknowledged this 9th day of December, 1930.

20 ROSSBACH & CRUMMY,
Solicitors for Complainant.

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OPINION.

Filed May 19, 1931.

IN CHANCERY OF NEW JERSEY.

*Between*FRANK R. SMITH,
Complainant,
*and*COLONIAL WOODWORKING Co.,
INC., a corporation, *et als.*,
Defendants.

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Opinion.

On bill to foreclose.

In an exchange of properties, subject to mortgage encumbrance, no equitable duty is imposed upon the grantee to pay off the encumbrance, in indemnity of the grantor, as would be the case had there been a sale and the mortgage encumbrance treated as part of the consideration price.

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For complainant, Rossbach & Crummy.

For defendants, Zucker & Goldberg.

BACKES, *Vice-Chancellor*:

The bill is to foreclose a \$14,000 mortgage made by the defendant to one Joachimsthal and assigned by him to the complainant. The defendant counter-claims that it paid two mortgage debts for Joachimsthal and pleads the sum as a set-off.

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Joachimsthal and the defendant agreed to exchange properties, and the agreement was consummated. The trade value of Joachimsthal's unencumbered property was fixed at \$20,000;

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Opinion.

that of the defendant at \$30,000, subject to mortgage encumbrances of \$27,000 given to secure the defendant's bond. The \$17,000 difference in Joachimsthal's favor was made up in part by the \$14,000 mortgage under foreclosure; the \$3,000 balance was adjusted. The defendant's

10 property consisted of two tracts, and the deed to Joachimsthal recites that they were conveyed, each subject to a first and second mortgage, precisely described. The first mortgages were foreclosed. Nothing was realized upon the second mortgages. The defendant was sued upon the bonds, and it paid the debt. These payments constitute the set-off. The defendant now claims that Joachimsthal is in conscience bound to reimburse the defendant, he having withheld the

20 consideration price of the conveyance to him for that purpose. The defendant has a misconception of the transaction. It was not a sale of the properties; it was an exchange of the equities. The printed form of the contract is entitled "Contract of Exchange" and the agreed state of facts characterizes the deed as an exchange. The contract is "to grant and convey," not to sell. The stipulated values of the respective properties was stated in the agreement to be "for the purpose of this contract"—trading figures. Joachimsthal did not agree to pay \$30,000 for the

30 defendant's property in cash and retain \$27,000 to pay off the mortgage debts. He took the defendant's property at that valuation subject to \$27,000 mortgage encumbrances. In an exchange of properties subject to mortgage encumbrances no equitable duty is imposed upon the grantee to pay off the encumbrance, in indemnity of the grantor, as would be the case had there been a

40 sale and the mortgage encumbrance treated as

Opinion.

part of the consideration price. The principle upon which the duty rests in sales of property is settled in this State. *Tichenor v. Dodd*, 4 N. J. E. 454. *Crowell v. St. Barnabas Hospital*, 27 N. J. E. 650. *Woodbury Heights Land Co. v. Loundenslager*, 60 N. J. E. 403. The principle is not pertinent to exchanges of real estate; the reason upon which the principle is based is absent. The set-off is not allowed and the counter-claim is dismissed.

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FINAL DECREE.

Filed June 1, 1931.

IN CHANCERY OF NEW JERSEY.

10 *Between*

FRANK R. SMITH,

*Complainant,**and*

COLONIAL WOODWORKING Co.,

INC., a corporation, *et als.,**Defendants.**On Bill, &c.**Final Decree.*

20 This cause coming on to be heard in the presence of Rossbach & Crummy, of counsel with the complainant, and Zucker & Goldberg, of counsel with the defendants, and the pleadings and proofs having been read and the agreed state of facts of the respective counsel having been read and considered, and the Court having duly considered the said pleadings, proofs and the agreed state of facts, and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by him in his bill of complaint, and

30 that the defendant, Colonial Woodworking Co., Inc., a corporation, is not entitled to the relief prayed for in its counter-claim; and it appearing that a decree pro confesso has heretofore, to wit, on the 11th day of December, Nineteen Hundred and Thirty, been taken against the Beck Brown Realty Co., Inc., a corporation;

40 It is on this 26th day of May, Nineteen Hundred and Thirty-one, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the

Final Decree.

said Chancellor by virtue of the power and authority of this court, doth hereby ORDER, ADJUDGE and DECREE that there is due to the complainant for principal and interest on his mortgage the sum of Fifteen Thousand Three Hundred Eighty-one Dollars and Thirty-three Cents (\$15,381.33) and that the complainant is entitled to have the said sum of Fifteen Thousand Three Hundred Eighty-one Dollars and Thirty-three Cents (\$15,381.33), with lawful interest thereon from the date of the within decree together with his costs of this suit, raised and paid out of the mortgaged premises; 10

And it is further ORDERED, ADJUDGED and DECREED that so much of the said mortgaged premises as will be sufficient to raise and satisfy the said debt, interest and costs, be sold; and that a writ of fieri facias do issue for that purpose out of this court, directed to the sheriff of the County of Essex commanding him to make sale according to law of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he pay the same to the complainant or to his solicitors; and that in case more money should be raised by the sale than shall be sufficient to answer such payment, such surplus money be brought into this court, and deposited with the clerk, to abide the further order of this court, unless otherwise previously disposed of by order of this Court; and the said sheriff is to make return to this court of his proceedings by virtue of said writ; 20 30

And it is further ORDERED, ADJUDGED and DECREED that the defendants, Colonial Woodworking Co., Inc., a corporation, and Beck Brown Realty Co., Inc., a corporation, stand absolutely debarred 40

Final Decree.

and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of this writ;

10 And it is further ORDERED, ADJUDGED and DECREED that the sum of Five Hundred Dollars (\$500.00) be allowed and paid to the solicitors of the complainant in addition to their taxed costs, and that the same be included in the taxed bill of costs, and collected with the other items of said bill;

And it is further ORDERED, ADJUDGED and DECREED that the fees for searches shall be taxed as a part of the taxable costs in favor of the complainant, in the sum of Fifty Dollars (\$50.00);

20 And it is further ORDERED, ADJUDGED and DECREED that the counter-claim of the defendant, Colonial Woodworking Co. Inc., a corporation be and the same is hereby dismissed.

E. R. WALKER,

C.

Respectfully advised,

JOHN H. BACKES,
V.-C.

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NOTICE OF APPEAL.

Filed June 5, 1931.

IN CHANCERY OF NEW JERSEY.

79/144.

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Between

FRANK R. SMITH,

*Complainant,**and*

COLONIAL WOODWORKING CO.,

INC., a corporation, *et als.,**Defendants.**On Bill, &c.**Notice of
Appeal.*

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The defendant, Colonial Woodworking Co. Inc., hereby appeals from so much of the final decree made in the above-entitled cause on the 26th day of May, 1931, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Hon. John H. Backes, Vice-Chancellor, which Orders, Adjudges and Decrees, that there is due to the complainant for principal and interest, on his mortgage, the sum of \$15,381.33, and wherein it is further Ordered, Adjudged and Decreed that the counter-claim of the defendant, Colonial Woodworking Co. Inc., a corporation, be, and the same is hereby dismissed, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

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Dated June 3, 1931.

ZUCKER & GOLDBERG,

Solicitors for and of Counsel with
Defendant, Colonial Woodwork-
ing Co. Inc., a corporation.

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Notice of Appeal.

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

MAURICE J. ZUCKER,
Of Counsel with Defendant, Colonial
Woodworking Co. Inc., a corporation.

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Service of a true copy of within Notice of Appeal, is hereby acknowledged, this 4th day of June, 1931.

ROSSBACH & CRUMMY,
Solicitors of Complainant.

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PETITION OF APPEAL.

Filed.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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FRANK R. SMITH, <i>Complainant-Appellee,</i> <i>vs.</i> COLONIAL WOODWORKING Co. INC., a corporation of New Jersey, <i>Defendant-Appellant.</i>	}	<i>On Appeal from the Court of Chancery. Petition of Appeal.</i>
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To the Honorable the Court of Errors and Appeals in the last resort in **all causes:**

The humble petition of Colonial Woodworking Co. Inc., the appellant in the above-stated cause, respectfully shows that:

1. Your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of the Hon. John H. Backes, Vice-Chancellor, bearing date the 26th day of May, 1931, in a cause wherein Frank R. Smith was complainant and Colonial Woodworking Co. Inc., a corporation of New Jersey, Julius Joachimsthal, Beck-Brown Realty Co. Inc., a corporation, and Angelo M. Ruggiero, were defendants, in these respects, to wit:

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That the said final decree orders, adjudges and decrees, that there is due to the complainant,

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Petition of Appeal.

for principal and interest, on his mortgage, the sum of \$15,381.33.

That therein, it is further ordered, adjudged and decreed, that the counter-claim of the defendant, Colonial Woodworking Co. Inc., a corporation be, and the same is thereby dismissed.

10 And your petitioner humbly appeals from such portions of the said decree, as aforesaid, upon the ground that the same are erroneous, for that, the said Court should have allowed the amount due your petitioner on account of the two judgments which it paid, with interest and costs, to be deducted and thereby accordingly reduce the principal and interest due the complainant on his mortgage, and should have granted a decree in favor of this defendant,
20 your petitioner, as prayed for in its amended answer and counter-claim, that it may be decreed to pay or make proper allowance to this defendant for the amounts found due it, with interest and costs, by a short day to be appointed by this court, and that in default of such payment, that a decree may be entered, ordering, adjudging and decreeing that such moneys so found to be due this defendant,
30 may be applied for and used towards the reduction of the mortgage under foreclosure, and that upon ascertaining the amount due, the complainant, and the amount due this defendant, your petitioner, by reason of its counter-claim, after an accounting, the same may be credited on said mortgage debt, and that the complainant, and the defendants, Julius Joachims'hal and Federal Trust Company (Springfield Avenue Branch), Newark, New Jersey, may be decreed to pay said amount to your petitioner, including
40 costs and expenses, and that your petitioner

Petition of Appeal.

should and may have such other and further relief as shall be just and equitable in the premises, and agreeable to equity.

Your petitioner further shows that it appeared in the proofs before the Chancellor, that your petitioner paid on October 16, 1930, the sum of \$2,525.00 on account of the second mortgage held by Angelo M. Ruggiero and \$2,544.00 on September 15, 1928, on account of the second mortgage held by the Southern Lumber Company. It further appeared that demand for the payment of both second mortgages was made on the due dates of the same; and it further appeared from the proofs before the Chancellor, that your petitioner executed the bonds and mortgages for which payment was made by it; that the first mortgages on the properties conveyed to Julius Joachimsthal were foreclosed, and nothing was realized upon the second mortgages; that the prices for the respective properties represented the true values at the date of the contract; also that the copy of the closing statement attached to the stipulation of facts, is a true copy of the figures arrived at, at the closing as a result of the agreement, and the Court erred in its opinion upon which the final decree is based, in holding that the defendant has a misconception of the transaction, that it was not a sale of the properties, but an exchange of the equities.

The Court further erred in permitting its decision to rest primarily upon a contract for the exchange of real estate instead of considering the final acts of the parties to the contract, by their deeds of conveyance.

That the Court further erred in its construction of the law as adjudged by this Honorable Court in disallowing petitioner's set-off and dismissing

Petition of Appeal.

its counter-claim on the ground that this was an exchange of properties, whereas in law and in fact it was an actual sale of definite property by each party to the other, the petitioner having carried out its undertakings by the payment of cash and the execution of the purchase money mortgage under foreclosure, in addition to having given title and taken title, both titles having been closed simultaneously, and irrespective of what the parties between themselves termed the said contract to be, it was nevertheless in law and in fact a sale by one party to the other of certain real estate subject to certain encumbrances, the payment of cash and the execution of a mortgage, all of which were agreed upon, were easily ascertained and were taken care of at the closing.

Your petitioner further prays that the said final decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such other relief in the premises as to this Honorable Court shall seem meet and proper.

ZUCKER & GOLDBERG,

Solicitors for and of Counsel with Appellant.

Of Counsel,
LOUIS D. GOLDBERG.

Service of a true copy of the within Petition of Appeal is herewith acknowledged, this 17th day of June, 1931.

ROSSBACH & CRUMMY,
Solicitors of Complainant.

ANSWER TO PETITION OF APPEAL.

Filed.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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*Between*FRANK R. SMITH,
*Complainant-Respondent,**and*COLONIAL WOODWORKING Co.,
INC., a corporation of New
Jersey,
*Defendant-Appellant.**On Appeal
from the
Court of
Chancery.**Answer to
Petition
of Appeal.*

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The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the 26th day of May, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and he prays

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Answer to Petition of Appeal.

that the same may be affirmed, with costs to be adjudged to this respondent.

ROSSBACH & CRUMMY,
Solicitors for Complainant-Respondent.

ADAM J. ROSSBACH,
10 Of Counsel.

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