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BILL OF COMPLAINT.

(Filed Dec. 26, 1928.)

IN CHANCERY OF NEW JERSEY.

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

The complainant, Louis Satanov Real Estate and Mortgage Corporation, a corporation of the State of New Jersey, with its principal office in Atlantic City, respectfully shows that:

1. On October 15, 1926, Joseph S. Naame Company, a corporation of New Jersey, being indebted to complainant in the sum of \$185,000.00, executed to it a bond of that date, to secure that sum, payable at any time within ten years from the date thereof, with the obligation of paying \$5,000.00 on account at the expiration of each and every year after the first year, together with interest thereon at the rate of six per cent (6%) per annum, payable semi-annually. 20

2. To secure payment of the bond, said Joseph S. Naame Company executed to complainant a mortgage of even date with the bond, and thereby conveyed to it 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 clerk's office of Atlantic County, October 16, 1926, in Mortgage Book No. 433, page 182. 30

3. The mortgaged premises are described as follows:

ALL THAT Tract of land and premises, situate in the City of Atlantic City, County of Atlantic and State of New Jersey, described as follows:

10 BEGINNING in the East line of Indiana Avenue, 50.77 feet North from Atlantic Avenue and extending thence (1) Northwardly, along Indiana Avenue, 260.23 feet; thence (2) Eastwardly, parallel with Atlantic Avenue, 265.66 feet to a point in the alleged South line of right of way of the Y railroad; thence (3) southwardly, along alleged South line of right of way of Y railroad to beginning.

4. Said mortgage was a purchase money mortgage and so recited.

20 5. Both bond and mortgage contained an agreement that if, at any time, default should be made in the payment of interest for the space of thirty (30) days after any semi-annual payment thereof should fall due, then the whole principal sum with all unpaid interest should, at the option of the mortgagee, its representatives or its successors or assigns, become immediately due.

30 6. That heretofore complainant filed its bill of complaint in this cause in an action between Louis Satanov Real Estate and Mortgage Corporation, complainant and Joseph S. Naame Company, *et al.*, defendants, in which all the parties made parties in this bill of complaint were also parties, the general object of which was to foreclose the mortgage mentioned herein for the non-payment of interest

thereon and likewise for the non-payment of \$5,000 of principal due thereon. Whereupon the said cause was heard upon bill, answer and counter-claim and replication in open Court; and the Court having considered the pleadings and heard and considered the briefs and argument of respective counsel and having filed its conclusions thereon, and being of the opinion that the bill was prematurely filed because at that time there was no default in the payment of interest which justified the complainant in demanding payment of the principal, it was, on the seventeenth day of November, 1928, ordered, adjudged and decreed that if the defendant pay the amount of interest thereon tendered as averred in the bill and established by the proofs, to wit, the sum of \$22,200, within ten (10) days from the date of said conclusions (which conclusions were filed on October 29, 1928), the bill be and the same is dismissed; and it likewise being further ordered, adjudged and decreed that there was a mutual mistake in the language used in the mortgage touching the payment of the interest referred to in the bill and that said mortgage should be reformed to express the true intent of the parties, and that the bond and mortgage be reformed to read that "no interest should become due and payable until October 15, 1927, and that the defendant should have thirty (30) days' grace thereafter to pay the interest due on said date before complainant should have the right to declare a forfeiture and demand the payment of the principal debt."

7. Defendant, Joseph S. Naame Company, did not pay the said interest as ordered in the said decree either within 10 days from the date of said conclusions, or within 10 days from the entry of the said

decree, or within 10 days after written demand therefor had been made; and the said two years interest having become due on October 15, 1928, and also \$5,000 due on account of the principal sum, and thirty days having expired and the said interest and principal still remaining due and unpaid, the complainant elected that by reason of such non-payment of interest, the whole principal sum of said mortgage shall fall due.

10

8. On November 12, 1927, complainant assigned said mortgage unto the West Jersey Bond and Mortgage Investment Company, a corporation of New Jersey, as collateral security for the payment of a loan of \$40,000.00, with interest; which assignment has been deposited for record in said clerk's office and is recorded in Book 94 of Assignments, page 308. The equity in this mortgage, after the payment to the West Jersey Bond and Mortgage Investment Company of its collateral loan as aforesaid with interest to November 12, 1927, is due complainant.

20

9. On June 20, 1928, complainant assigned unto the Atlantic City National Bank, a corporation of the United States of America, the said mortgage, subject to the prior assignment made to the West Jersey Bond and Mortgage Investment Company, as collateral security for the payment of a further loan of \$20,000. The equity in this mortgage, after the payment to the West Jersey Bond and Mortgage Investment Company of its collateral loan and to the Atlantic City National Bank of its collateral loan, as aforesaid, with interest thereon, is due complainant.

30

10. On March 5, 1927, by mortgage of that date, recorded March 11, 1927, in Book 451 of Mortgages, page 455, in said clerk's office, the said Joseph S. Naame Company mortgaged the premises in question to Joseph S. Naame, to secure \$175,000.00 with interest.

Any interest which said Joseph S. Naame took by virtue of said mortgage, is subject to the lien of complainant's mortgage.

10

11. On May 16, 1927, said Joseph S. Naame assigned his said \$175,000.00 mortgage, by assignment recorded on that date in said clerk's office in Book 90, page 340, unto Ronald J. Harris.

Any interest which said Ronald J. Harris took by virtue of said assignment, is subject to the lien of complainant's mortgage.

12. On May 16, 1927, said Ronald J. Harris assigned said mortgage unto Joseph S. Naame, which assignment is recorded in said clerk's office on May 26, 1927, in Book 90, page 486.

Any interest which said Joseph S. Naame took by virtue of said assignment, is subject to the lien of complainant's mortgage.

20

13. On June 2, 1927, said Joseph S. Naame entered into a subrogation agreement with David Gundling and Isadore Friedlander, which agreement was recorded June 6, 1927, in Book 463 of Mortgages, page 284, in said clerk's office; under which said Joseph S. Naame subrogated said \$175,000.00 mortgage and made a \$25,000.00 mortgage then on the premises which was subsequent to complainant's mortgage, also subsequent to said \$175,000.00 mortgage.

30

Any interest which said David Gundling and Isadore Friedlander may have in said premises by virtue of said agreement is subject to the lien of complainant's mortgage.

10 14. On March 5, 1927, said Joseph S. Naame, by assignment of that date recorded July 16, 1927, in Book 91 of assignments, page 421, in said clerk's office, assigned said \$175,000.00 mortgage unto Max Silberman.

Any interest which said Max Silberman may have in said premises by virtue of said assignment, is subject to the lien of complainant's mortgage.

20 15. On July 26, 1927, by agreement of that date recorded in said Clerk's office July 27, 1927, in Book 470, page 62, said Joseph S. Naame Company, Joseph S. Naame and Max Silberman entered into an agreement among themselves, referring to the payment of interest and other charges upon said property.

Any interest which said Joseph S. Naame Company, Joseph S. Naame and Max Silberman may have in the premises by virtue of said agreement, is subject to the lien of complainant's mortgage.

30 16. On December 7, 1928, said Max Silberman, by assignment of that date recorded December 10, 1928, in Book 451 of Assignments, page 455 in said clerk's office, assigned said mortgage unto Fleck-Atlantic Company, a corporation of New Jersey, Lake and Risley Company, a corporation of New Jersey, and Thomas Graham of Atlantic City.

Any interest which said Fleck-Atlantic Company, Lake and Risley Company, and Thomas Graham may have in the premises by virtue of said assign-

ment, is subject to the lien of complainant's mortgage.

17. On December 7, 1928, said Fleck-Atlantic Company, a corporation of New Jersey, Lake and Risley Company, a corporation of New Jersey, and Thomas Graham, by assignment of that date recorded December 13, 1928, in Book 451 of Assignments, page 455 in said clerk's office, assigned said mortgage unto the Atlantic City National Bank, a corporation of the United States of America. 10

Any interest which said Atlantic City National Bank may have in the premises by virtue of said assignment, is subject to the lien of complainant's mortgage.

18. On August 8, 1927, by mortgage of that date recorded August 8, 1927, in Book 471, page 149 in said clerk's office, said Joseph S. Naame Company mortgaged the premises in question to Joseph S. Naame, to secure \$50,000.00 within one year. 20

Any interest which said Joseph S. Naame took in said premises by virtue of said mortgage, is subject to the lien of complainant's mortgage.

19. On August 15, 1927, by assignment of that date, recorded August 17, 1927, in Book 93, page 70, in said clerk's office, said Joseph S. Naame assigned said \$50,000.00 mortgage to David Gundling and Isadore Friedlander. 30

Any interest which said David Gundling and Isadore Friedlander took in said premises by virtue of said assignment, is subject to complainant's mortgage.

20. By agreement dated August 15, 1927, and re-

corded August 17, 1927, in Book 475 of Mortgages, page 25, in said clerk's office, it was agreed between Joseph S. Naame Company, party of the first part, and David Gundling and Isadore Friedlander, of the second part, that there was then due upon the said \$50,000.00 mortgage, \$40,000.00 with interest from August 8, 1927.

10 Any interest which said David Gundling and Isadore Friendlander may have in said premises by virtue of said agreement, is subject to the lien of complainant's mortgage.

21. On November 7, 1928, by mortgage of that date recorded November 10, 1928, in Book 517 of Mortgages, page 233 in the said clerk's office, the said Joseph S. Naame Company mortgaged the premises in question to George C. J. Fleck and Thomas Graham of Atlantic City and Lake and Risley Company, a corporation of New Jersey, to se-
20 cure the sum of \$127,000.00, with interest.

Any interest which the said George C. J. Fleck, Thomas Graham, and Lake and Risley Company took by virtue of said mortgage is subject to the lien of complainant's mortgage.

22. Said Joseph S. Naame Company has always been in possession of the mortgaged premises.

30 23. The whole amount of principal with interest thereon from October 15, 1926, is due upon complainant's bond and mortgage.

24. Lincoln Apartment Hotel Corporation, Joseph S. Naame, President, is in possession of part of the mortgaged premises, namely #15½ North Indiana Avenue, as a tenant or otherwise. Any interest

which the said corporation has in the premises, is subject to the lien of complainant's mortgage.

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

1. That Joseph S. Naame Company, a corporation, West Jersey Bond and Mortgage Investment Company, a corporation, Atlantic City National Bank, a corporation, Joseph S. Naame, Ronald J. 10
Harris, David Gundling, Isadore Friedlander, Max Silberman, Fleck-Atlantic Company, a corporation, Lake and Risley Company, a corporation, Thomas Graham, George C. J. Fleck, Lincoln Apartment Hotel Corporation, Joseph S. Naame, President, who are the defendants in this suit, may answer this bill of complaint and each statement therein made.

2. That an account may be taken of the amount 20
due on complainant's mortgage.

3. That the defendants or any of them may be decreed to pay complainant the amount so found due, with interests 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 complainant the amount so found due on its mortgage, with interests and costs.

5. That a writ of subpoena may issue, command-

10 *Answer of Joseph S. Naame Company*

ing said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

EMERSON RICHARDS,
*Solicitor for and of Counsel
with Complainant.*

A true copy
THOMAS BARBER,
Clerk.

10

ANSWER OF JOSEPH S. NAAME CO., A CORPORATION, &C.

IN CHANCERY OF NEW JERSEY.

20 Between

LOUIS SATANOV REAL ESTATE AND MORTGAGE CORPORATION, a corp., &c.,

Complainant,
and

JOSEPH S. NAAME COMPANY, a corp., &c.,
et al.,

Defendants.

On Bill to Foreclose.
Answer of Joseph S. Naame Co., a corp., &c.

30

Defendant, Joseph S. Naame Co., a corporation of the State of New Jersey; answering the bill of complaint, says:

1. Paragraph 1 is admitted but defendant requires the production of the said bond to show its exact terms and conditions.

2. Paragraph 2 is admitted but defendant requires the production of the mortgage to show its exact terms and conditions.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

10

5. Defendant believes that Paragraph 5 of the bill correctly states the agreement respecting default but prays the production of the bond and mortgage to show its exact terms and conditions.

6. Defendant admits the averments in paragraph 6 with this qualification, that complainant produce the records to which reference is made to determine their exact contents. 20

7. Paragraph 7 is denied.

8. Defendant is without information sufficient to form a belief and, therefore, can neither admit or deny.

9. Defendant is without information sufficient to form a belief and, therefore, can neither admit nor deny. 30

10. Paragraph 10 is admitted.

11. Paragraph 11 is admitted.

12. Paragraph 12 is admitted.

12 *Answer of Joseph S. Naame Company*

13. Paragraph 13 is admitted.
14. Paragraph 14 is admitted.
15. Paragraph 15 is admitted.
16. Paragraph 16 is admitted.
17. Paragraph 17 is admitted.
18. Paragraph 18 is admitted.
- 10 19. Paragraph 19 is admitted.
20. Paragraph 20 is admitted.
21. Paragraph 21 is admitted.
22. Paragraph 22 is admitted.
23. Paragraph 23 is denied.

Further answering the bill of complaint the defendant says:

- 20 (1) That after the decree of dismissal of the bill to foreclose referred to in paragraph 6 of the bill and within the time required by said decree, to wit; November 7, 1928, it tendered to the complainant in lawful money of the United States of America the full amount of interest due pursuant to the said decree and also all interest and amortization due to October 15, 1928, and the complainant refused to receive it, and Louis Satanov, its president and sole stockholder, who was authorized to speak for the complainant, stated that the complainant intended to prosecute an appeal from said decree. Defendant thereupon relying upon said refusal and said statement touching an appeal used the money which it had tendered and which was refused.

30 (2) Thereafter and a day or two before the filing of this bill said complainant made demand for the

payment of the interest which said final decree required defendant to pay, and defendant promptly proceeded to procure the money necessary to pay the same and had the same in its possession to tender to the complainant on the 23rd day of January, 1929, but after diligent inquiry and attempt, was not able to locate the president of the corporation or its solicitor, Emerson L. Richards, but did see said Louis Satanov on the 24th day of January, 1929, and tendered to him the full amount of interest due pursuant to said decree and he refused to accept said tender. 10

(3) Defendant further answering said bill of complaint says that by reason of the refusal of the complainant to accept the tender first made, it had a legal right to await the next interest bearing period before making a re-tender and that complainant was without right to make a demand prior to that time, but that if it is in error as to this it had a right to have a reasonable time in which to raise and tender the money after demand made and that the money was raised and a re-tender made within a reasonable time and that complainant was without right in equity to file its bill to dismiss, but if it had an equitable right at the time, it lost its right to prosecute after a re-tender and refusal. 20

(4) Defendant Joseph S. Naame, Co., a corporation, &c., therefore, prays that it may be dismissed with its costs. 30

COLE & COLE,
Solicitors for and
PAUL M. SALSBERG,
Of Counsel with Defendant
Joseph S. Naame Co., a
corp., &c.

(Bond and mortgage produced, offered, received in evidence and marked Exhibit C1 and C2 respectively.)

Mr. Richards: Your Honor please, I ask the former case be sent down here. I wish to offer the decree.

The Court: I take it the entire file should be offered. 10

Mr. Cole: I intended to offer the whole file.

The Court: The entire file.

Mr. Richards: I am sure the whole file is admissible.

The Court: The file should be admitted.

Mr. Richards: I have no objection to it. 20

The Court: File will be offered in evidence.

LOUIS SATANOV, SWORN.

Direct examination. 30

By Mr. Richards:

Q. The conclusions in the former case were filed on October 30th. Now, at that time how much was due upon the mortgage?

Mr. Cole: That is objected to. It calls for a conclusion. It may not make any difference, but I would rather we have the facts.

The Court: I will permit it as a preliminary question, but it must be connected up. You may answer.

- 10 Q. By way of interest and principal?
A. I believe was two years' interest and \$5,000 on the amortization on account of the mortgage.
Q. Give us in totals the amounts that were due?
A. Well, October the 15th, 1927, was due one year's interest.
Q. That is how much?
A. That is \$11,200, I believe.
Q. Six per cent on \$185,000?
A. Yes, \$11,100.
- 20 Q. Now, then, that was the interest from October 15th, 1926, to October 15th, 1927?
A. Right.
Q. And there was interest from October 15, 1927, to October 15, 1928?
A. Yes, sir.
Q. And that was another \$11,200?
A. Yes, sir.
Q. \$100?
A. Yes.
- 30 Q. Then there was a part of the principal sum due, wasn't there?
A. \$5,000.
Q. That would make a total of \$27,200?
A. Something like that.
Q. Now, was that paid?
A. No, sir.
Q. Has it ever been paid?

A. No, sir.

Q. Now, in the period—was there ever an offer of that money at all to you?

A. It was tendered to me, yes.

Q. When was it tendered to you?

Mr. Cole: Speak a little louder, Mr. Satanov, please.

A. Yes, was a tender made to me last January, I 10 believe, was made in your office, Senator Richards, I don't know the date, 24th of—I will tell you in a minute—24th of January, 1929.

The Court: Gentlemen, I notice in the file an answer and counter-claim of the West Jersey Bond and Mortgage Company as represented by Mr. Cohen. There is no proof on file of any service of this bearing upon him, and I don't see him present. What is the situation? 20

Mr. Richards: The representative of the bond and mortgage company is here. I think the situation is this, that, of course, it was agreed among themselves that Mr. Satanov should represent them in the proceedings; in other words, he has the right, the mortgage is hypothecated, but there is a clause in the hypothecation which gives him control over the corpus of the mortgage for this purpose. 30

The Court: If the bond and mortgage company is represented here by a representative, you may proceed.

Q. What I am getting at is that after the Vice-Chancellor's conclusions in the former case were

made known, was there a tender to you of the money?

A. Yes, sir.

Q. When was that tender made?

A. I believe it was November the 7th, 1928, November the 7th, to the best of my recollection.

Q. Now, at that time did you accept it or refuse it?

A. Refused it.

10 Q. Did you give any reason for refusing it?

A. Yes, sir.

Q. What was the reason?

Mr. Cole: I object to the reason he gave.

The Court: I will permit what he told them.

Q. What did you tell them?

20 A. Why, we intended to appeal at that time.

Q. Now, subsequently did you write or cause to be written a letter apprising the defendant that you had changed your mind on that subject?

A. Yes, sir.

Mr. Richards: I ask for the production of the original letter.

Mr. Salsburg: Which letter?

30 Mr. Richards: The letter demanding payment of the money.

A. I delivered the letter to Mr. Salsburg's office, got a copy here.

Q. Counsel of the Naame Company?

A. Yes, sir.

(Letter produced.)

Q. Is this the letter?

A. Yes, sir.

Q. Now, who is Mr. Salsburg?

A. Mr. Naame's attorney. He acknowledged that, Senator, with a letter of acknowledgment, you will see.

Q. Who was Mr. McMullin?

A. It was my attorney at that time.

10

(Letter offered, received in evidence and marked Exhibit C3.)

Q. Did you get an answer to that letter?

A. To Mr. McMullin, yes.

Mr. Richards: Of course, I suppose you admit you got it?

Mr. Salsburg: Admit I received the letter? Yes.

20

Q. After that letter was received, how long did you wait for a tender of the \$27,200?

A. Until January 24th.

Q. What?

A. January 24th, 1929, that was the January letter.

Q. What did you do next after you wrote that letter in relation to this thing?

30

A. Well, I waited until about December 25th and then I consulted you.

The Court: Bill was filed December 26th.

Q. The bill was filed in this case on December

26th, now, after that was there a tender made to you?

A. Yes, sir.

Q. When was that tender made?

A. On January 24th, 1929.

Q. And that offer, of course, you declined?

A. Yes, sir.

Q. Do you know exactly how that declination was made? Were you present?

10 A. You mean the tender, is that what you mean?

Q. Yes, at the time of the tender.

A. Yes, made at your office.

Q. Was the declination a verbal one, or was it in writing or how?

A. Verbal one.

Q. Who spoke for you on that occasion?

A. You did.

Q. Do you know whether I spoke orally or whether I read from a paper or letter?

20 A. You read from a letter.

Mr. Richards: Mr. Salsburg, have you the original of that letter?

Mr. Salsburg: I take it this is the letter you refer to. (Producing letter.)

Mr. Richards: Yes.

30 Q. Mr. Satanov, who made the tender of the money?

A. Why, there were three gentlemen there, I believe, two or three, I don't remember, one of them, I don't remember exactly who it was.

Q. Well, was Mr., the gentleman sitting with Mr.

A. Mr. Naame was present, yes.

Q. Was he the one who produced the money?

A. I think so.

Q. And was it to him that I read this letter?

A. Yes, sir.

Q. Is this a copy or original of the letter that I read, so far as down to the signature is concerned?

A. Yes, sir.

Mr. Richards: Counsel produces letter of January 24th, 1929, addressed to Mr. Paul M. Salsburg, which I desire to offer. 10

(Letter offered, received in evidence and marked Exhibit C4.)

Cross-examination.

By Mr. Cole:

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Q. Did you receive a letter under date of January 23rd, 1929, from Mr. Salsburg or Mr. Naame?

A. I have not.

Q. What?

A. I have not. I received on the 24th. On the 24th I have received it. 23rd I was out of town, it was received on the 24th.

Q. Where is that letter?

A. I have a copy here.

30

Q. You have the original?

A. I mean the letter, yes.

Q. Let me have that, won't you?

(Letter produced and marked D1 for identification.)

Mr. Salsburg: Letter also sent to Senator Richards at the same time.

Mr. Cole: Will you produce the letter sent to you at the same time?

(Letter produced and marked D2 for identification.)

10 Mr. Richards: If your Honor please, I have Mr. Louis Mathis subpoenaed here to prove in addition to that the last half of the taxes, December taxes, were not paid. Mr. Mathis, however, did not bring his books and he has gone back after them. I don't think without the books, if there is any question about it —

20 The Court: Is there any objection to his being called at a later period?

Mr. Cole: I object to any proof touching the non-payment of taxes, no such averment in the bill.

Mr. Richards: I think there is an averment in the bill. If there is not—you are right.

30 Mr. Cole: I read it over last night and don't recall seeing any grounds of forfeiture on that account.

The Court: A cursory glance indicates that there is no such charge.

Mr. Richards: That is correct, if your Honor please. There is no allegation in the bill.

COMPLAINANT RESTS.

DEFENDANT'S TESTIMONY.

JOSEPH S. NAAME, SWORN.

Direct examination.

By Mr. Cole:

Q. You are the president of the Naame Company? 10

A. Yes, sir.

Q. Do you recall when you first had notice of the demand to pay the interest after the refusal to accept it, remember the date?

A. After the first tender, you mean, Judge?

Q. Yes, he refused, so he said. Now, when did you know after that that he wanted it?

A. Around the first of the year some time.

Q. Of this year?

A. 1929, yes, latter part of December some time, 20 to the best of my recollection.

Q. And what did you do after that to endeavor to get the money?

Mr. Richards: I object to that, if your Honor please, what he did was all right, but what he did to get the money is not. If your Honor please, we are not interested in what he did to get the money.

Mr. Cole: Of course, it is our contention that we 30 were not required to hold this money after we had been told that an appeal would be taken, and we didn't hold it, and, therefore, the question of what we did when we were told that he wanted it, to try and raise it, seems to me is a very important question here as to whether we are to be charged with

not having used reasonable diligence to get the money, and whether there should be a forfeiture worked against us, assuming this is a case where a forfeiture would work.

The Court: There is no objection on the part of Senator Richards to what you did, apparently.

10 Mr. Richards: If your Honor please, what he did with respect to paying money, but what he did to get the money, I don't see we are interested in, presumably the company had the money all the time. If they did, that hasn't anything to do with that the holder of the mortgage is interested in.

The Court: I will admit the question.

(Question repeated.)

20 A. I immediately informed the parties who were concerned in this proposition, one of whom was Mr. John D. McMullin, at that time also Mr. Satanov's attorney, who was very familiar with this proposition and the method of getting this money, and he and myself and Mr. Fleck proceeded as fast as we could to obtain this money after his refusal, his first refusal had mixed us up in such a way we couldn't let twenty-seven thousand lying there idle, to have it thrown back and forth at Mr. Satanov's demand,
30 and when he informed me he was going to appeal they returned this money, and when we got the second notice we had to go all over to get this money as fast as we can, and Mr. McMullin who was his own attorney at that time proceeded as fast as he can, and finally got the money around January 22nd, 1929, we were unable to find either Mr. Richards or

Mr. Satanov until the 24th, on which day we made the tender.

Q. What day did you finally procure the money to make the tender, do you recall?

Mr. Richards: I object to it, if your Honor please.

The Court: I will permit it.

A. Between January 20th and 22nd we actually got the money.

Q. Now, between the time that you learned of the new demand for the money and the time that you actually received it to make the tender, were you endeavoring all that time to get the money?

A. Every minute, Judge.

Q. Was there ever any demand made on you as president of this company for this money?

A. I have no recollection of one, Judge.

Cross-examination.

By Mr. Richards:

Q. Mr. Naame, will you deny that you did not receive a letter?

A. No, Judge, I didn't, or Mr. —

Q. Call him Judge, he likes it better.

A. He may have written me one, I have no recollection, I received so many letters from him I don't know just which.

Q. Is this your signature? (Showing witness registry receipt.)

A. No, that is not mine. G. B. Noble.

Q. Who is he?

A. Bell boy.

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20

30

Q. Where?

A. At the apartment.

Q. Where you live?

A. No, don't live there. That is where the place of business is.

Q. The Lincoln Apartment?

A. That is right.

Q. Do you know whether you got this letter or not?

10 A. I may have.

Q. Of which this is a receipt?

A. I don't remember. I say I received so many letters that God knows what I did get from him.

Q. I show you a copy of a letter dated December 18th, did you get that letter?

A. I may have, I won't say yes and won't say no. I don't know which is which.

20 Q. Now, you say you got word that the demand was made for the money in the latter part of December. Are you sure it was the latter part or the fore part of December?

A. I know it was in December.

Q. Now, this letter of the 18th, which you don't know whether you got or not was a letter that demanded the money, wasn't it?

A. Yes, so it says there, anyway.

Q. Mr. Salsburg was your counsel, counsel of the company, wasn't he?

A. That is right.

30 Q. And he got a letter demanding money on the 7th of December. Didn't he indicate that demand to you?

A. Yes, he did.

Q. So that it must have been, then, around the 8th or possibly the 9th of December that you knew of this demand?

A. No, that is not right.

Q. When did he communicate it to you?

A. It was a week after that because I happened to be away at that time, practically a week, as near as I can remember.

Q. There are other officers of the company, aren't there, who are the officers of the company?

A. I am the —

Mr. Salsburg: Just a minute. I object to the form of the question. There are other officers of the company, does the question imply I am an officer of the company?

The Court: Who were the officers, is the question.

A. I am the only active officer.

Q. Who are the other officers?

A. At that time I was the president, I am not sure whether Mr. Taylor or my brother was the treasurer at that time, treasurer and secretary, some change made at that time, I can't exactly remember.

Q. Where was Mr. Taylor?

A. He is manager for another concern.

Q. I didn't get you?

A. He is the manager for Fleck-Atlantic Company.

Q. He was in town, wasn't he?

A. I couldn't say.

Q. He was the treasurer?

A. I couldn't answer that because at that time there was a change made on the company, I don't know who was.

Q. Either he was or somebody else was, who would the other person have been?

A. That is my brother.

Q. Is he in Atlantic City?

A. Yes, sir.

Q. Did he hold any other office in the company?

A. None whatsoever.

Q. This was the office of the company there at the Lincoln Building, wasn't it?

A. That is correct.

10 Q. So that the early part of December you did know that Mr. Satanov or this company that actually holds the mortgage was demanding the money?

A. So far as I can remember, Senator, I got to correct this, by the way, it was somewhere near the middle of December, I can't tell you the date, it was around, I won't say the latter part of December, may have been one day before or one day after it, I don't remember that, because I happened to be away at the time.

20 Q. Now, at that time, as I understand it, you didn't have the money?

A. We didn't exactly have it in our desk drawer, if that is what you mean.

Q. Well, did you have it in bank?

A. We had it where we could get it in the bank, yes, sir.

Q. Then when you found out that he did want the money in the middle of December, why didn't you pay him?

30 A. Because Mr. Satanov's first refusal complicated the company so we were going through a reorganization and in order to get this paper or get this money we had to have certain papers signed which we couldn't have signed for the simple reason one of the gentlemen required to sign those papers was away at Hazleton, and we couldn't get

hold of him until about the middle of January; that is the best of my recollection.

Q. Where did you say he lived?

A. In Hazleton.

Q. What is his name?

A. Mr. Friedlander, that is, he didn't live there, he has business there, he was there at that time.

Q. Hazleton is in Pennsylvania, isn't it?

A. That is right.

Q. Had he loaned you the money to make the original tender? 10

A. No.

Q. What became of the money with which you made the original tender?

A. Returned to the bank where it came from.

Q. You borrowed it from the bank, is that it?

A. On security, yes.

Q. What bank?

A. Atlantic County Trust.

Q. When you say returned to the bank, you mean that it was deposited there in the name of the company? 20

A. No.

Q. It was given back to the bank?

A. Given back to the bank.

Q. Their money?

A. Yes, I suppose it was.

Q. Did you borrow that money for the purpose of making that tender?

A. I did. 30

Q. Now, then, why didn't you go back and borrow it again in December?

A. We did.

Q. In December?

A. We started to get the money in December, but, as I say, Mr. Satanov's first refusal made us go

through a reorganization, and we couldn't do the same thing over again in such a hurry.

Q. The decree was signed on —

A. October 30th.

Q. October 30th, or conclusions were October 30th, how many days after those conclusions were filed did you make the first payment?

A. Seven days, we made the first payment November the 7th.

10 Q. Well, if, within seven days, you were able to raise the money the first time, why couldn't you have raised it within seven days the second time?

A. The first time I prepared for it about several months, two or three months before that.

Q. Were you so sure of winning this case that

Mr. Cole: I object.

20 Q. —that you prepared for payment three months ahead of the time that the conclusions were handed down?

A. I had to have the —

The Court: Sustain the objection.

Q. How did you come to three months in advance prepare to get this money?

30 Mr. Cole: I object, may it please your Honor. It is of no consequence or relevancy how he got it, and he did tender it, and it was received.

The Court: I think it is admissible. He is now endeavoring to show by reason of the actions of the complainant he was unable to make the payment

after he was notified that their refusal to accept the tender had been withdrawn, only upon that ground is it admissible.

Mr. Richards: Of course, if your Honor please, I am asking these questions only the theory of the former ruling in overruling my objection.

The Court: I have permitted the question.

10

(Question repeated.)

A. Why, it is presumable I had to have the money, win or lose, it was not a question of winning, it was a question of having the money, win or lose it.

Q. Well, you knew that you would have to pay this money if you did win or lose, didn't you?

A. The first time, yes.

Q. Well, in any case if you lost you had to have it and a good deal more?

20

A. That is correct, Senator.

Q. If you won you had to have it anyhow?

A. But when I had the letter Mr. Salsburg informed me the case was going to be appealed, I said, "How long is it necessary before this appeal will come up?" He said, "I don't think it will come up for six months," so naturally the money was returned to the bank and forgotten for the time being, until this sudden demand was made by Mr. Satanov again.

30

Q. So, to get down to the meat of it, you didn't have the money when Mr. Satanov abandoned his appeal and notified you of that, and that is the reason why you didn't pay?

A. No, that is not correct.

Q. Did you have the money?

A. Yes, we had the money or we could have gotten it right away if certain papers could have been signed, but we couldn't, that was all.

Mr. Cole: We offer Exhibits D1 and D2 in evidence.

(D1 and D2 for identification, admitted in evidence and marked Exhibits D1 and D2.)

10

DEFENDANT RESTS.

COMPLAINANT'S REBUTTAL.

20

LOUIS SATANOV, recalled.

• Direct examination.

By Mr. Richards:

Q. Did you send a letter of which this is a copy to the Naame office about the date that it bears there?

30

A. I have.

Q. How was it sent?

A. Registered mail.

Q. Is this the registry slip?

A. Yes, sir.

(Offered in evidence.)

Cross-examination.

By Mr. Cole:

Q. Did you sign the original of this letter yourself?

A. Yes, sir.

Q. Who did the typewriting?

A. I don't remember now.

Q. You didn't do it?

10

A. No.

Q. Did you have a person in your office to do your typewriting?

A. No.

Q. You didn't?

A. No.

Q. Did you dictate this letter?

A. I had it done, yes.

Q. To whom did you dictate it?

A. To the Joe Naame Company.

20

Q. But what typist or typewriter?

A. I don't remember, Judge.

Q. You don't remember?

A. I know it was written and I mailed it myself, that is all.

Q. When was it that you concluded that you were not going to prosecute the appeal?

A. Why, time we sent Mr. Naame the notice.

Q. How long before that had you reached that conclusion?

30

A. I couldn't tell you that.

Q. Your letter said, "Kindly remit this amount to us at once;" is that in the original that was sent?

A. I beg pardon?

Q. Was that in the original letter that was sent to remit the amount at once?

A. It is a copy exactly.

Q. You don't know when you concluded that you would not take the appeal?

A. I know we concluded at that time that we had

Q. When did you conclude it, you say "we," you mean you?

A. I will tell you about when, I couldn't say the date.

10 Q. Show us the paper from which you have been reading.

A. What is that?

Q. Show us the paper from which you have been reading.

A. You can see it. (Producing paper.) December the 7th, the last year, at the time I have written the letter to them, December the 7th.

20 Q. Do you mean that you reached the conclusion on December the 7th that you were not going to appeal?

A. Yes.

Q. Why did you wait eleven days before you wrote Mr. Naame of that conclusion?

A. Wrote him the same day.

Q. What?

A. Wrote the same day to his attorney.

Q. Wrote the same day?

A. Yes, December the 7th wrote to Mr. Salsburg.

Q. This letter is dated December 18th.

30 A. After we didn't get any reply, we have sent another letter to Mr. Naame.

Q. That is the first letter you wrote to Naame Company, is it, under date of December 18th?

A. First letter I sent —

Q. This is the first letter you wrote to the Naame Company?

A. Yes, sir, after he didn't come across with the money we mailed him that letter.

Q. When you made up your mind that you were not going to prosecute this appeal and made a demand on Naame for the return of the money at once, did you do that with the idea that you would catch him napping and he wouldn't have the money and you could file this bill to foreclose?

A. No, sir.

Q. Didn't have that in your mind at all? 10

A. No, sir.

(Letters offered, received in evidence and marked Exhibits C5 and C6.)

TESTIMONY CLOSED.

EXHIBIT C3. 20
4/26/29L.

LAW OFFICES
OF
JOHN D. McMULLIN
645 Guarantee Trust Bldg.
Atlantic City, N. J.
December 7, 1928

Paul M. Salsburg, Esq.,
Guarantee Trust Building, 30
Atlantic City, N. J.

Dear Sir:

In the matter of Louis Satanov Real Estate and Mortgage Corporation, complainant vs. Joseph S. Naame Company, et als., defendants:

My client has decided not to appeal from the de-

cree entered by the Vice Chancellor on November 17, 1928.

There is interest on the mortgage and a \$5,000.00 amortization over-due on the mortgage for which we now ask, viz: Two years interest to October 15, 1928 and also \$5,000.00 on account of amortization.

Please arrange to pay this at once.

In regard to your costs. If you will have some taxed and give me the tax bill, I will see that they
10 are paid.

Your truly,
Jno D McMullin
Atty for Complt as abv.

JMcM:HC

EXHIBIT C4.

4/26/29L.

20

EMERSON RICHARDS
COUNSELLOR-AT-LAW
SUITE 517 GUARANTEE TRUST BUILDING
ATLANTIC CITY, N. J.

January 24th, 1929.

Mr. Paul M. Salsberg,
434 Guarantee Trust Bldg.,
Atlantic City, N. J.
Satanov vs. Naame.

30 Dear Sir:

The writer regrets that professional engagements prevented his being at the office yesterday at the time you desired to make a tender in the above matter.

Demand was made on December 7th for the interest and amortization due under the mortgage. No

attention whatever was paid to this demand until January 23rd, a matter of 48 days, and until after a bill to foreclose has been filed and service made. In the mean time Mr. Satanov has been put to the expense of retaining counsel, making a search, and also serious inconvenience because of your failure to promptly meet our demand for payment.

In addition we find that there is a large amount of unpaid taxes upon the property, and therefore the default in the mortgage would not be cured by a payment of the interest and amortization. For this reason we do not feel that we should again forego our right to foreclose. 10

Very truly yours,
Emerson Richards

ERH

P. S.—Since the dictation of the above Mr. Naame has been to the office and made a formal tender of the interest. I asked him about the taxes and he denied that there was any taxes due and also that there was any insurance due. I find both of these statements are incorrect. There is unpaid insurance for a very considerable amount and an examination of the records of the tax office show that the taxes due on December 1, 1928 are unpaid. I therefore did not consider that the tender was made in good faith. 20

EXHIBIT C5.

4/26/29L.

December 18, 1928.

10 Joseph S. Naame Company,
c/o Lincoln Apartments,
North Indiana Avenue,
Atlantic City, New Jersey.

Gentlemen:

The Louis Satanov Real Estate and Mortgage Company, has decided not to appeal from the decree entered by Vice Chancellor Ingersoll, on November 17 27th last, in the foreclosure proceedings against you and others. There is due on the mortgage at 20 this time, Five Thousand (\$5,000.00) Dollars, on account of principal, with two years' interest up to October 15th, 1928.

Kindly remit this amount to us at once.

Very truly yours,

LOUIS SATANOV REAL
ESTATE AND MORT-
GAGE COMPANY

BY

President.

30 LS

EXHIBIT D1.

January
23rd
1929.

Louis Satanov, Real Estate &
Mortgage Corporation,
c/o Louis Satanov,
Iowa Apartments,
ATLANTIC CITY, N. J. 10

My dear Mr. Satanov:—

The Joseph S. Naame Company by Mr. Joseph S. Naame has endeavored to reach you both at your office and at your home all day. An effort has also been made to reach your counsel, Senator Richards both at his office and at the bank, said effort being unsuccessful. The purpose was in order to again make a tender to you of all interest due by virtue of the mortgage held by the Louis Satanov Real Estate & Mortgage Corporation against the Joseph S. Naame Company, as well as the amortization. My client stands ready to make this tender notwithstanding that the same was made on November 7th, 1928, and refused by you. If you will be good enough to advise us where we can make this tender by calling either Mr. Naame or myself, we are willing to pay you as above indicated. 20

Very truly yours, 30

Paul M. Salsburg.

PMS HW

EXHIBIT D2.

January
23rd

1929.

10

Hon. E. L. Richards,
Guarantee Trust Bldg.,
ATLANTIC CITY, N. J.

Dear Senator:-

Mr. Joseph S. Naame of the Joseph S. Naame Company and I have endeavored to reach both Mr. Satanov and yourself all day for the purpose of tendering all of the interest and amortization due under the mortgage held by the Louis Satanov, Real Estate & Mortgage Corporation against the Joseph S. Naame Company, principal of said mortgage being \$185,000 on land and premises owned by the Naame Company on North Indiana Avenue. My client stands willing to pay the same to either you or Mr. Satanov as soon as either of you can be reached for this purpose.

Very truly yours,

Paul M. Salsburg.

PMS HW

30

teen hundred and twenty-eight, on motion of Paul M. Salsburg, solicitor for defendant, ORDERED, ADJUDGED AND DECREED that if the defendant pay the amount of interest heretofore tendered as averred in the bill established by the proofs within ten days from the date hereof the bill be and the same is hereby dismissed with costs to the defendant;

And it appearing by proof submitted that the defendant has tendered the amount of such interest to the complainant and that complainant has refused to accept the same; 10

It is ordered, adjudged and decreed that the bill be dismissed with costs to the defendant, including a counsel fee of dollars, to be collected in accordance with the practice of this court.

It is further ordered, adjudged and decreed that there was a mutual mistake in the language used in the mortgage touching the payment of the interest referred to in the bill and that said mortgage should be re-formed to express the true intent of the parties and that the bond and mortgage be re-formed to read that no interest should become due and payable until October 15, 1927, and that the defendant should have thirty days' grace thereafter to pay the interest due on said date before complainant should have the right to declare a forfeiture, and demand the payment of the principal debt. 20

E. R. Walker
C 30

Respectfully advised
R. H. Ingersoll
V C

CONCLUSIONS.
IN CHANCERY OF NEW JERSEY.

10	<p>Between</p> <p>LOUIS SATANOV REAL ES- TATE AND MORTGAGE CORP., a corp., &c., <i>Complainant,</i> and JOSEPH S. NAAME COM- PANY, a corp., &c., <i>et al.,</i> <i>Defendants.</i></p>	}	<p>On Bill to Foreclose. Conclusions.</p>
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(These conclusions are not to be published in the
official or unofficial reports.)

30	<p>MR. EMERSON RICHARDS for the complainant. MESSRS. COLE & COLE and MR. PAUL SALSBURG for the defendant, Joseph S. Naame Company. MR. CHARLES A. COGAN, for the defendant, West Jersey Bond and Mortgage Investment Com- pany.</p>
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INGERSOLL, V. C.:

A previous bill was filed to foreclose this mort-
gage because of non-payment of interest. A memor-

andum was filed, that in the event of the payment of the interest then in default (the non-payment of which formed the default upon which the election was based) within ten days from the date thereof, the bill would be dismissed. A tender was made and refused, upon the ground that an appeal would be taken from such conclusion, and a decree was advised dismissing the bill.

A subsequent demand was made, and payment not being made, a bill was filed to foreclose for failure to pay said interest; a part of which being the same interest, the payment of which had been refused. 10

Apparently the defendant relied upon the fact that proceedings under the appeal would postpone the payment for several months, and the money which had been borrowed to pay the interest was repaid. The defendants were unable to borrow the amount of money necessary to pay the interest for some considerable time after demand was made—in fact, for a considerable period after the filing of the bill. 20

Default having been made in the payment of said interest, the complainant corporation was justified in electing that the principal had become due.

The contention of the defendants is, that they having once made tender and such tender being refused, they should have a reasonable notice and demand of the proposed election and foreclosure proceedings.

Although the defendant had obtained the result desired; that is, the dismissal of the first bill to foreclose (because of the refusal of the tender), I believe their contention is sound. 30

I find, however, that they did have such notice. The testimony is that on December 7th, 1928, complainant notified defendant's counsel and later, on

the 17th day of December, notified the defendant of the demand, both prior to the filing of the bill to foreclose, and no payment was tendered until January 24th, 1929, twenty-nine days after the filing of the bill. The explanation made by the defendant is, that they not having the money in the first instance, borrowed a sufficient sum to make such payment, but (apparently relying upon the usual time required to complete an appeal and bring the same to a de-
10 termination) they returned the money and were unable to again obtain the loan to make the payment before the filing of the bill.

I originally considered ten days a reasonable time for the payment of the overdue amount, and I am still of the opinion that ten days was and is a reasonable time. The complainants waited more than this time before filing the bill.

A decree in favor of the complainant will be advised.

20 Determined: June 19th, 1929.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between

LOUIS SATANOV REAL ES-
TATE AND MORTGAGE
CORP., a corp., &c.,

Complainant,
and

JOSEPH S. NAAME COM-
PANY, a corp., &c.,
et al.,

Defendants.

On Bill to Foreclose.
Final Decree.

10

20

This cause being opened to the Court by Emerson Richards, solicitor of the complainant, in the presence of Clarence L. Cole, solicitor of the defendants, Joseph S. Naame and Joseph S. Naame Company, John D. McMullin, solicitor of the defendants, Atlantic City National Bank, Fleck-Atlantic Company, Thomas Graham, Lake and Risley Company and George C. J. Fleck, Herbert R. Voorhees, solicitor of the defendants David Grundling and Isidor Friedlander, and Charles A. Cogan, solicitor of the defendant West Jersey Bond and Mortgage Investment Company, and the testimony of the witnesses on behalf of the complainant and on behalf of the defendants having been heard in open court and it appearing to the Court that the bill of complaint is properly brought and that the whole of the

30

principal sum of the complainant's mortgage is due because of the default having been made in the payment of the interest upon the said bond and mortgage, whereupon complainant elected that the principal of said mortgage should become due; and it appearing that the defendant, West Jersey Bond and Mortgage Investment Company, holds an assignment of the said bond and mortgage to secure the sum of \$40,000; and it appearing that the defendant,

10 Atlantic City National Bank, likewise holds an assignment of the said bond and mortgage to secure the further sum of \$53,650; and it further appearing that the defendant, Atlantic City National Bank, is the holder by assignment of a mortgage in the sum of \$175,000 given by Joseph S. Naame Company, a corporation of New Jersey, to Joseph S. Naame, upon which there is now due to the said Atlantic City National Bank the sum of \$136,000 together with interest from the date of this decree,

20 and that the total amount remaining due and unpaid upon the said mortgage in the sum of \$168,000 with interest from March 5, 1929; and it appearing that the defendants, Thomas Graham, Lake and Risley Company, a corporation of New Jersey, and Fleck-Atlantic Company, a corporation of New Jersey, are jointly entitled to the balance due upon the said mortgage, to wit, the sum of \$32,000 with interest from March 5, 1929; and it appearing that

30 David Grundling and Isidor Friedlander are the holders by assignment of a third mortgage from Joseph S. Naame Company, a corporation of New Jersey, to Joseph S. Naame, in the sum of \$50,000 upon which mortgage there is due the sum of \$31,000 together with interest from August 8, 1929; and it appearing that the defendants, George C. J. Fleck, Thomas Graham and Lake and Risley Company, a

corporation of New Jersey, are the holders of a fourth mortgage from defendant Joseph S. Naame Company, a corporation of New Jersey, to the said defendants to secure the sum of \$127,000 upon which there is now due the sum of \$100,000 together with interest from November 7, 1928; and it further appearing that the several mortgages cover all of the mortgaged premises set out in complainant's bill of complaint; and it further appearing that the four mortgages should be paid and satisfied in the order set out in this decree; and it appearing that the said premises should be sold as one parcel to pay and satisfy the moneys due to the complainant and to the defendants West Jersey Bond and Mortgage Investment Company, Atlantic City National Bank, Thomas Graham, Lake and Risley Company, Fleck-Atlantic Company, David Grundling, Isidor Friedlander, and George C. J. Fleck, respectively, together with the costs of this suit, and for this purpose, sale should be made of all that tract, lot or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, described as follows:

BEGINNING in the East line of Indiana Avenue, 50.77 feet North from Atlantic Avenue and extending thence (1) Northwardly, along Indiana Avenue, 260.23 feet; thence (2) Eastwardly, parallel with Atlantic Avenue, 265.66 feet to a point in the alleged South line of right of way of the Y railroad; thence (3) Southwardly, along alleged South line of right of way of Y railroad to beginning.

It is, on this 25th day of September, nineteen hundred and twenty-nine, ordered, adjudged and decreed that the said mortgaged premises herein de-

scribed be sold as aforesaid to raise and satisfy the money due the complainant and to the defendants, West Jersey Bond and Mortgage Investment Company, Atlantic City National Bank, Thomas Graham, Lake and Risley Company, Fleck-Atlantic Company, David Grundling, Isidor Friedlander, and George C. J. Fleck; that is to say, to pay and satisfy unto the complainant the sum of \$185,000 together with interest thereon from October 15, 1926, together
10 with lawful interest thereon to be computed from the 25th day of September, 1929, being the date of this decree, with the complainant's costs to be taxed, including a counsel fee of \$1750.00 dollars which is hereby allowed to said complainant, and including the sum of \$546.43 advanced by complainant for insurance upon the said property; but from which amount there shall be deducted and paid to the West Jersey Bond and Mortgage Investment Company the
20 sum of \$40,000 together with interest from the date of this decree, and from which said sum there shall be deducted and paid to the Atlantic City National Bank the sum of \$53,650 together with interest from the date of this decree; and then next to pay and satisfy unto the said defendant, Atlantic City National Bank, the sum of \$136,000 with interest thereon from the date of this decree; and then to pay unto Thomas Graham, Lake and Risley Company, and Fleck-Atlantic Company jointly the sum of \$32,000 with interest on the whole sum of \$168,000 from
30 March 5, 1929, being the amount of the second mortgage; and then to pay and satisfy unto David Grundling and Isidor Friedlander the sum of \$31,000 together with lawful interest thereon from August 8, 1929, being the amount due upon the said third mortgage; and then to pay and satisfy unto George C. J. Fleck, Thomas Graham, and Lake and Risley

Company, jointly, the sum of \$100,000 together with interest from November 7, 1928, being the amount due on the said fourth mortgage; and that a writ of *fieri facias* issue for that purpose out of this Court directed to the sheriff of the County of Atlantic commanding him to make sale according to law of the said mortgaged premises hereinabove described, and that out of the moneys arising from said sale he pay to the complainant or his solicitor his said debt, interest and costs, and to the said 10 defendants, West Jersey Bond and Mortgage Investment Company and the Atlantic City National Bank, or their solicitor their said debts, interest and costs, and to the defendants, David Grundling and Isidor Friedlander or their solicitor, their said debt, interest and costs, and to the defendants, George C. J. Fleck, Thomas Graham and Lake and Risley Company, or their solicitor their said debt, interest and costs; and that in case more money shall be raised 20 by said sale than shall be sufficient to answer such several payments, then said surplus be brought into this Court to abide the further order of this Court unless otherwise previously disposed of by this Court; and that the sheriff make return without delay of his proceedings by virtue of said writ.

And it is further ordered, adjudged and decreed that said defendants, Joseph S. Naame and Joseph S. Naame Company, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises when sold 30 as aforesaid by virtue of this decree.

Chancellor.

Defendants Joseph S. Naame and Joseph S. Naame Company do not object to the form of this decree.

NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

	Between 10 LOUIS SATANOV REAL ES- TATE AND MORTGAGE CORPORATION, a corp., &c., <i>Complainant,</i> and JOSEPH S. NAAME COM- PANY, a corp., &c., <i>et al.,</i> <i>Defendants.</i>	}	On Bill to Foreclose. Notice of Appeal.
20			

To Emerson Richards, Solicitor of Complainant:

The defendant, Joseph S. Naame Company, a corporation, &c., hereby appeals from the final decree made in the above-entitled cause on the twenty-sixth day of September, nineteen hundred and twenty-nine, made by the Chancellor on the advice of Vice-
 30 Chancellor Ingersoll, and from the whole and every part thereto, to the Court of Errors and Appeals in the last resort in all causes.

Dated September 27, 1929.

COLE & COLE,
Solicitors for Defendant
Joseph S. Naame Com-
pany, a corp., &c.

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

PAUL M. SALSBURG,
*Of Counsel with Defendant
Joseph S. Naame Com-
pany, a corp., &c.*

PETITION OF APPEAL.

10

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

LOUIS SATANOV REAL ES-
TATE AND MORTGAGE
CORPORATION, a corp.,
&c.,

Complainant-Respondent,
and

JOSEPH S. NAAME COM-
PANY, a corp., &c.,
et al.,

Defendants-Appellants.

On Appeal from
Chancery.
Petition of Appeal.

20

30

*To the Honorable the Court of Errors and Appeals
in the last resort in all causes:*

The petition of Joseph S. Naame Company, a corporation, &c., the appellant in the above-entitled cause, respectfully shows that:

1. 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, on the advice of Vice-Chancellor Ingersoll, bearing date the twenty-sixth day of September, nineteen hundred and twenty-nine, in a certain cause in said Court of Chancery wherein the said Louis Satanov Real Estate and Mortgage Corporation, a corporation, &c., was complainant and the
10 said Joseph S. Naame Company, a corporation, &c., and others were defendants, in this respect, to wit, that the said decree adjudges that the relief prayed for by complainant be granted.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it should have been determined that there was no indebtedness or default at the time of the filing of the bill,
20 and that the same should have been dismissed.

Petitioner, therefore, prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

COLE & COLE,

Solicitors for and

PAUL M. SALSBURG,

Of Counsel with Appellant.

30

ANSWER TO PETITION OF APPEAL.

Formal answer to petition of appeal.

New Jersey Court of Errors and Appeals

Between
LOUIS SATANOV REAL ESTATE AND
MORTGAGE CORPORATION,
Complainant-Respondent,
and
JOSEPH S. NAAME COMPANY, a Corp.,
&c., *et al.*,
Defendants-Appellants.

ON APPEAL FROM CHANCERY.

BRIEF FOR APPELLANT.

STATEMENT.

Respondent filed its bill to foreclose a mortgage, made by appellant, and has a decree from which this appeal is taken.

The default alleged (paragraph 6 of bill), was the failure of appellant to comply with a decree of the Court, in a previous cause between the parties, wherein the same mortgage was sought to be foreclosed. See copy of the final decree in said cause, p. 42.

It was contended in that case, by appellant, that the bill was prematurely filed, and the Vice-Chancellor concurred.

The decree says:

“Ordered, adjudged and decreed that if the defendant (appellant here) pay the amount of interest heretofore tendered as averred in the bill, established by the proofs within ten days from the date hereof, the bill be and the same is hereby dismissed with costs to the defendant.”

The interest was tendered and refused, the decree thus proceeds:

“And it appearing by proof submitted that the defendant has tendered the amount of such interest to the complainant and that complainant has refused to accept the same;

It is ordered, adjudged and decreed that the bill be dismissed with costs, &c.”

The bill, paragraph 7, in the instant case, as stated, avers a failure to comply with the previous decree. This averment is opposed to the finding to the contrary in the previous decree, to the proofs and the Vice-Chancellor's finding in the instant case.

On technical grounds, at least, appellant is entitled to a reversal because of failure of proof of the sole ground of default. Appellant's answer denies the averments in paragraph 7 of the bill. The answer then proceeds (page 12) to aver a tender and refusal, which the Vice-Chancellor found was the fact. No amendment was made to the bill, nor any replication filed. Appellant offered its proof which established that.

The tender was made to Louis Satanov, president, who refused, for the reason, as stated, that the company intended to appeal (page 18). This was November 7th, 1928.

Ignoring the issue made by the pleadings, respondent offered proof (not objected to), to establish another and different default, a failure to tender the amount claimed to be due after notice that an appeal from the said (first) decree would not be prosecuted and a demand made for payment. A new tender was made on January 24th, 1929, after bill filed, and refused.

The Vice-Chancellor determined that ten days after demand was a reasonable time in which to pay, and that respondent was justified in declaring a forfeiture.

The amount tendered was \$27,200, and the bill was filed December 26th, 1928 (page 19).

ARGUMENT.

A.

THE BILL SHOULD HAVE BEEN DISMISSED.

Respondent's bill relies upon a single breach, which was proved not to exist.

No request was made to amend when it was found that the averred breach did not exist, and notwithstanding the defense set up that the tender had been refused for a stated reason.

“EQUITY ABHORS A FORFEITURE.”

The Court will discern no equity favorable to respondent after reading and considering the record.

True, the foregoing point was not stirred before the Vice-Chancellor, for the reason (frankly stated) it did not occur to counsel. But the failure to stir the point before the Vice-Chancellor is not an insuperable barrier here. The Court should seize upon any just ground to reverse the decree. It was done by this Court, for a feebler reason than exists here, as we perceive the situation, in a case between the same parties, reversed in title. *Naame, &c., v. Satanov, &c.*, 147 Atlantic Reporter, page 436. There the point upon which the case was decided in that cause was not noticed by anyone. The Court suggested the point during the argument, and determined that the decree should be affirmed because of lack of power in Satanov, president, to make the alleged agreement, notwithstanding the answer filed by the corporation did not deny his power.

B.

IN THE CIRCUMSTANCES TEN DAYS WAS TOO SHORT A TIME TO REQUIRE APPELLANT TO MAKE TENDER.

55 Eq 615 Appellant was informed that the reason for the refusal of the first tender was an intention to appeal. Manifestly, this relieved appellant of the necessity of retaining so large a sum as \$27,000, even conceding that under ordinary circumstances it was required to keep it in hand to tender at any moment. At the least, appellant should have been allowed

thirty days. Assuming that demand was made on December 7th (which is denied), the bill was filed December 26th; within 19 days after demand.

C.

APPELLANT DID NOT RECEIVE TEN DAYS' NOTICE BEFORE THE BILL WAS FILED.

The notice of December 7th (the first) was addressed to Mr. Salsburg, who was neither a stockholder nor officer of appellant. It was delivered at his office (not personally), page 18. Naame, president, did not receive the notice until a week later (page 2). Exact date uncertain. Demand on Salsburg could not bind the appellant until he brought it to the attention of appellant.

There is an absence of satisfactory proof that demand was made ten days before bill filed. The notice to Salsburg demanded payment "at once," not within ten days.

The first notice to the appellant (Exhibit C5, page 38), was dated December 18th, 8 days before bill filed. This also required payment "at once." This notice gave the first intimation to appellant that the appeal was not to be prosecuted.

D.

RESPONDENT NEVER AUTHORIZED SATANOV TO MAKE THE DEMAND.

The relation of Satanov to respondent does not appear in the proofs. He it was who directed the

notice of December 18th. There is no proof that the corporation, through its directors, authorized the demand, or took any action relative thereto. In a previous cause between the parties this Court held that corporate action was necessary. *Naame Co. v. Satanov, &c., supra.*

E.

RESPONDENT IS NOT HERE WITH CLEAN HANDS.

The notice of an intention to appeal was a mere subterfuge to catch appellant napping.

Respondent is claiming a forfeiture upon highly technical grounds.

It is apparent now that there was no intention to appeal. Satanov was evidently disappointed when appellant complied with the decree which required respondent to accept a tender of interest and thereby defeated his obvious purpose to declare a forfeiture and demand the payment of the principal of \$185,000.

No explanation is given of his sudden change of mind not to appeal.

It seems reasonably clear that the plan was to refuse the tender, lull appellant into a feeling of security against any future demand until after the disposition of the appeal, and then demand the money at a time when it was thought appellant would have difficulty in procuring it.

F.

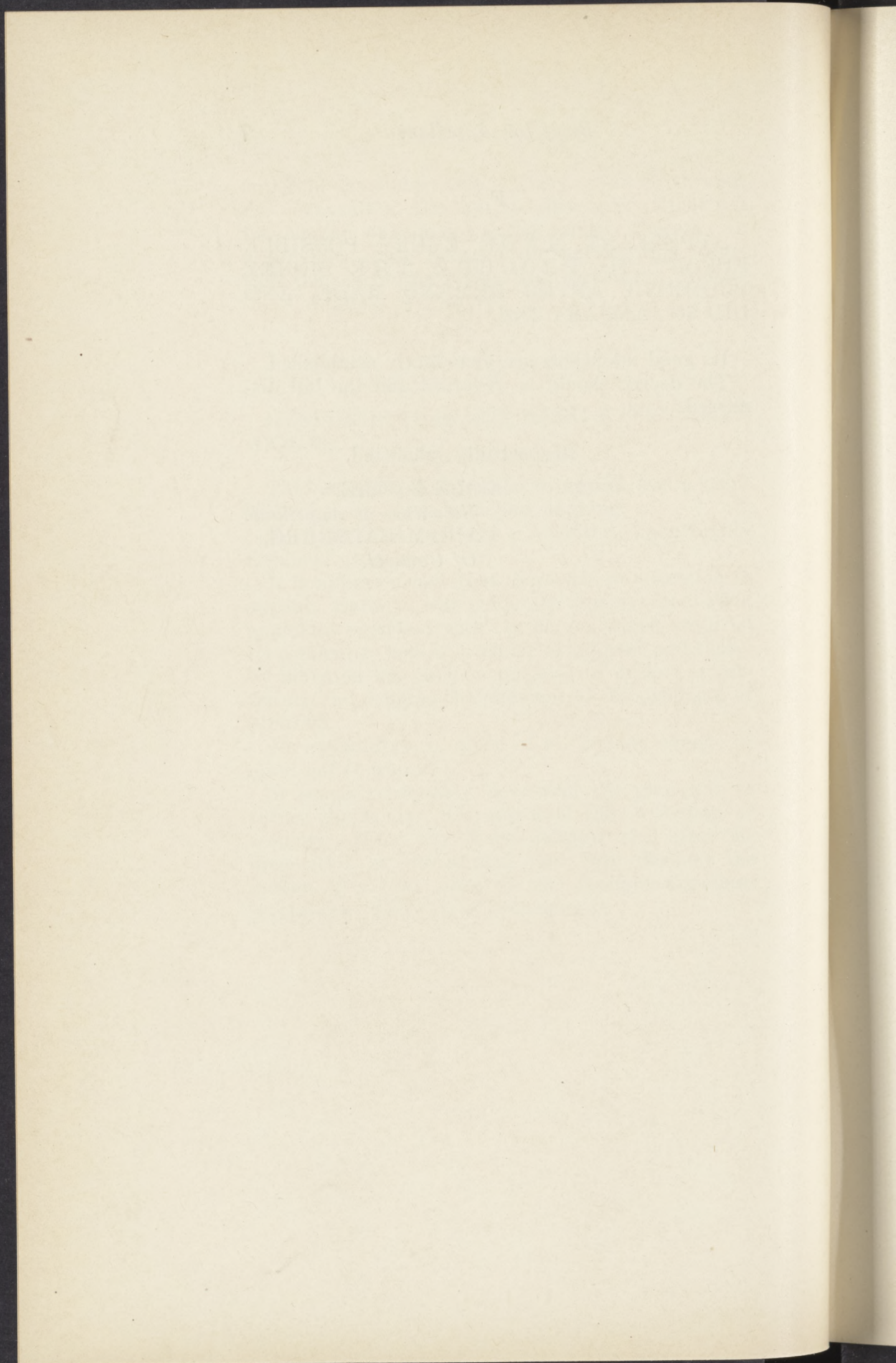
APPELLANT MADE EVERY POSSIBLE EFFORT TO PROCURE THE MONEY PROMPTLY AFTER DEMAND MADE, AND DID SO JANUARY 23rd.

Its good intentions are abundantly established.

The decree should be reversed and the bill dismissed.

Respectfully submitted,

COLE & COLE,
Solicitors of Appellant.
PAUL M. SALSBERG,
Of Counsel.



NEW JERSEY
Court of Errors and Appeals

BETWEEN
LOUIS SATANOV REAL ESTATE
AND MORTGAGE CORPORATION,
Complainant-Respondent,
and
JOSEPH S. NAAME COMPANY,
A CORP., ETC., ET AL.,
Defendants-Appellants.

On Appeal from
Chancery.

BRIEF OF RESPONDENT

FACTS

Respondent is not in accord with the facts as stated in appellants' statement of facts. The bill filed is to foreclose a mortgage: "Defendant, Joseph S. Naame Company, did not pay the said interest as ordered in the said decree either within 10 days from the date of said conclusions, or within 10 days from the entry of the said decree, or within 10 days after written demand therefor had been made; and the said two years' interest having become due on October 15, 1928, and also \$5,000 due on account of the principal sum, and thirty days having expired and the said interest and principal

still remaining due and unpaid, the complainant elected that by reason of such nonpayment of interest, the whole principal sum of said mortgage shall fall due." (Paragraph 7, bill of complaint, page 3, lines 32 to 34, page 4, lines 1 to 10.)

The history of the case is as follows: After the original bond and mortgage were made, an extension agreement was made extending the time of the payment of principal and interest to October 15, 1926. The original mortgage contained the usual thirty-day grace clause. The question in the first suit was whether or not by reason of the extension agreement, the interest fell due absolutely on October 15, 1926, or if the mortgagor had, by reason of the original agreement, thirty days grace after October 15th. The learned Vice-Chancellor held, as a matter of law, that the mortgagor had such thirty days grace, and that therefore the bill was prematurely filed. In his conclusions in that case the learned Vice-Chancellor concluded by saying that if the mortgagor (defendant) paid the interest and principal then due (\$22,200. interest, \$5,000. principal, total \$27,200.) within ten days from the date of said conclusions, a decree would be entered dismissing the bill. These conclusions were filed on October 29, 1928. Seven days later the defendants herein made a tender of the \$27,200 to Satanov, president of the complainant company, and on advice of counsel the tender was declined for the reason that complainant desired to file an appeal and review the conclusions of the Vice-Chancellor upon the point of law just referred to.

Shortly after present counsel was consulted by complainant, and being of the opinion that the Vice-Chancellor's conclusions were correct, advised against prosecuting the appeal. Thereupon, on December 7, 1928, counsel of record delivered a letter to Paul M. Salsburg, Esq., counsel of record for defendant (Exhibit C3, page 35) stating that complainant would not appeal from the decree and demanding payment of the interest

and principal due. This letter was communicated to Naame, president of the Joseph S. Naame Company.

"Q. Mr. Salsburg was your counsel, counsel of the company, wasn't he?

A. That is right.

Q. And he got a letter demanding money on the 7th of December. Didn't he indicate that demand to you?

A. Yes he did." (P. 26, lines 27 to 33.)

To this demand no attention was paid, and on December 18th a second letter sent by registered delivery reiterating the demand, was made. (Exhibit C5, page 38.) It is admitted that no answer was given to either complainant or his counsel until January 24, 1929.

On the twenty-sixth of December complainant filed his bill to foreclose the mortgage for the nonpayment of the interest and principal. On the twenty-fourth of January a tender was made of \$27,200, and which did not include any interest on the interest or principal due since October 15, 1928. (Exhibit C4, pages 36 and 37.) The Vice-Chancellor concluded that defendants were required to make a continuing tender; that they had ample notice before bill was filed; and that inasmuch as ten days was reasonable time for the payment of such interest, the failure of defendants to pay within that time constituted a default under the mortgage.

ARGUMENT

I

The bill, paragraph 7, does not seek a foreclosure because of failure to comply with the decree, although that is alleged, but also for failure to comply with the terms of the mortgage and pay within thirty days the interest due on October 15. A reading of this paragraph does not support appellants' contention. The proof taken was in support of paragraph 7 of the bill and was not a new default. The original conclusions required payment by November 8, and the mortgage by Novem-

ber 15. It is admitted that no tender was made after November 7. The reason why no tenders were made and why none could have been made by defendant appears from the testimony. Naame, president of defendant company, first declared that he had the money in bank.

“Q. Now, at that time, as I understand it, you didn’t have the money? (Middle of December.)

A. We didn’t exactly have it in our desk drawer, if that is what you mean.

Q. Well, did you have it in bank?

A. We had it where we could get it in the bank, yes, sir.

Q. Then when you found out that he did want the money in the middle of December, why didn’t you pay him?

A. Because Mr. Satanov’s first refusal complicated the company so, we were going through a re-organization, and in order to get this paper or get this money we had to have certain papers signed which we couldn’t have signed for the simple reason one of the gentlemen required to sign those papers was away at Hazleton, and we couldn’t get hold of him until about the middle of January; that is the best of my recollection.” (P. 28, lines 20 to 36, p. 29, lines 1 and 2.)

After pointing out that Hazleton was nearby in Pennsylvania, it developed that the money for the original tender was simply borrowed from a bank and immediately returned to them.

“Q. What became of the money with which you made the original tender?

A. Returned to the bank where it came from.” (P. 29, lines 13 to 15.)

“Q. Did you borrow that money for the purpose of making that tender?

A. I did. (P. 29, lines 28 to 30.)

“Q. So, to get down to the meat of it, you didn’t have the money when Mr. Satanov abandoned his

appeal and notified you of that, and that is the reason why you didn't pay?

A. No, that is not correct.

Q. Did you have the money?

A. Yes, we had the money or we could have gotten it right away if certain papers could have been signed, but we couldn't, that was all." (P. 31, lines 31 to 36, p. 32, lines 1 to 3.)

From the above testimony it is clear that the reason defendants ignored complainant's request for payment was that they didn't have the money. The original tender was apparently not in too good faith, the money simply being borrowed, withdrawn from the bank, formal tender made, the money returned to the bank and the loan paid off. And Naame, president of defendant company, admits that they neither had the money to pay the interest nor apparently could they get it prior to January 24. It is admitted that they did not communicate to complainant this or any other reason for their failure to comply with his demand of December 7. Unquestionably, therefore, he was justified in filing his bill on December 26. Even then, no tender was made until thirty days after the filing of the bill, and forty-eight days after the original request. This delay, unexplained to complainant and admittedly due to defendant's inability to raise the money, certainly constituted a breach of both the original decree and the mortgage, for which complainant was entitled to maintain his bill.

II

The next contention is that ten days was too short a time to require appellants to make a tender. It must be remarked that the Chancellor set ten days as a reasonable time in the first instance, and that a tender was made within seven days. It would, therefore, seem to have been ample in the second place, had the defendant not disposed of this money. As stated above, actually no tender was made for forty-eight days. Defendant put it out of his power to make a tender.

"A. But when I had the letter Mr. Salsburg informed me the case was going to be appealed, I said, 'How long is it necessary before this appeal will come up?' He said, 'I don't think it will come up for six months,' so naturally the money was returned to the bank and forgotten for the time being, until this sudden demand was made by Mr. Satanov again." (P. 31, lines 23 to 30.)

Some question is raised about the time when Naame actually knew of the demand. He fixes it middle of December.

"A. So far as I can remember, Senator, I got to correct this, by the way, it was *somewheres near the middle of December*, I can't tell you the date, it was around, I won't say the latter part of December, may have been one day before or one day after it, I don't remember that, because I happened to be away at the time." (P. 28, lines 13 to 19.)

His admission he got the letter of December 7 from Salsburg occurs on page 31, already referred to above.

III

The above quotations answer point C in appellant's brief.

IV

Point D urges that there was no proof of Satanov's right to make a demand. Defendant's answer (p. 12, state of the case) says:

"And Louis Satanov, its president and sole stockholder, *who was authorized to speak for the complainant*, stated that the complainant intended to prosecute an appeal from said decree," etc. (lines 29 to 32).

The admission in the pleadings disposes of the contention.

V

It is urged that defendant was entrapped into the forfeiture. It is submitted there is not one single word of testimony to possibly bear out any such conclusion. Naame does not charge it, nor did he testify to it. On the other hand, the question was directly asked of complainant's president and denied by him.

"Q. When you made up your mind that you were not going to prosecute this appeal and made a demand on Naame for the return of the money at once, did you do that with the idea that you would catch him napping and he wouldn't have the money and you could file this bill to foreclose?

A. No, sir.

Q. Didn't have that in your mind at all?

A. No, sir." (P. 35, lines 3 to 11.)

This is the only proof in the case and affirmatively disposes of defendant's contention.

LAW

The law in this case is so well settled that the point has not even been raised for the past sixty years. The last word upon the subject is:

Stockton v. Dundee Manufacturing Co., 22 N.

J. Eq., p. 56.

In that case Chancellor Zabriskie said:

"But a tender of the mortgage debt does not in this State discharge the lien of the mortgage and was so determined by the Court of Appeals in *Shields v. Lozear*, 5 Vroom, 496, and as the defendants have not paid the money into Court and it does not appear that they have kept it on hand, uninvested, since the tender, they are not discharged from the interest."

In the instant case, not only was the tender not maintained, but defendant put it out of their power to continue the tender. The doctrine of continuous tender was settled so long ago in the English decisions that the cases referred to in the Stockton case and the Shields case make further citations unnecessary. There must be a continuous tender, otherwise upon what legal theory could complainant force payment of the interest due to him?

The suggestion of appellants' counsel that the complainant was compelled to wait until the next interest day is no answer at all, because on the next interest day the only interest due would be the interest for the six months' period from October, 1928, to April, 1929, and there would be no more legal justification for demanding payment of the two years interest past due on that date than there would be on any other day. Nor has it ever been the law that failure to receive an interest installment for any reason was a waiver of the right to receive the interest on demand. Both the Shields case and the Stockton case repudiate this idea. The most that can be said is that a refusal to receive the interest frees the mortgagor of the obligation to pay interest on the interest from the time of the refusal.

"An unaccepted tender of the mortgage money made after the day prescribed in the mortgage will not affect the lien of the mortgage on the land. It is neither a performance of the condition for payment, nor satisfaction of the debt. Its only effect will be to stop the running of interest and to subject the mortgagee to the costs of a redemption by a bill in equity."

Shields v. Lozean, 34 Law, 496.

It is respectfully urged that even the doctrine of reasonable time applied by the learned Vice-Chancellor has little foundation in law to support it. The rights of the appellant and complainant are fixed by their contract, and it was not within the province of the Court to alter these terms or to set up a second period of grace after

that nominated in the mortgage. Since the mortgagor is obliged to make a continuous tender, only such time as is necessary after the demand to actually produce the money in payment of the interest due is required.

The suggestion that equity abhors a forfeiture has no application. Mortgages are being forfeited and foreclosed by the score every day in the year. The Court of Chancery does not seek to find ways to prevent foreclosures, but to assist the creditor in collecting his debt when due. Otherwise, the whole modern business structure would collapse.

Respectfully submitted,

EMERSON RICHARDS,
*Solicitor for and of counsel
with Complainant.*

