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Notice of Appeal.

(Filed Nov. 15, 1930.)

In Chancery of New Jersey 10

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION, a New Jersey Corporation,
Defendant.

76-344

On Bill, etc.

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The defendant, Florence A. Sullivan, hereby appeals from the Final Decree made in the above entitled cause on October 7, 1930, and from the whole and every part thereof to the Court of Errors and Appeals, in the last resort in all causes.

HENN & BURR,

30

Solicitors for and of counsel with
defendant, Florence A. Sullivan.

Dated November 1st, 1930.

I conceive there is a good cause for Appeal in the above entitled action.

FREDERICK C. HENN,
Of counsel with defendant,
Florence A. Sullivan.

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Affidavit of Service.

IN CHANCERY OF NEW JERSEY.

Between		
	BURT DEVEAU,	10
	<i>Complainant,</i>	
	and	
PIROZZI CONSTRUCTION CORPORATION, a New Jersey Corporation,		} On Bill, etc.
<i>Defendant.</i>		

State of New Jersey, }
 County of Hudson, } ss.: 20

SADIE CANNON, of full age, being duly sworn, according to law, upon her oath, deposes and says:

On November 19th, I served a copy of the Amended Notice of Appeal, on David Bobker, solicitor of Receiver, in the above entitled matter, by leaving said copy at his office 972 Broad Street, Newark, New Jersey, with a person in charge thereof.

SADIE CANNON. 30

Sworn and subscribed to before me }
 this 19th day of November, 1930. }

F. A. SULLIVAN,
 Notary Public of New Jersey.

Petition of Appeal.

(Filed December 2, 1930.)

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

BURT DEVEAU,
Complainant,

v.

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey Corpora-
tion,

Defendant.

On Appeal from
the Court of
Chancery.

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

The petition of Florence A. Sullivan, the appel-
lant, in the above entitled cause, respectfully shows
that:

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1. Petitioner finds himself aggrieved by a Final
Decree made in the Court of Chancery by his
Honor Edwin Robert Walker, Chancellor of the
State of New Jersey, bearing date October 7, 1930,
in a certain cause in said Court of Chancery
wherein the said Burt DeVeau was complainant
and Pirozzi Construction Corporation, a New Jer-
sey Corporation, was defendant, in this respect,
to wit, that said decree adjudges that,

“ORDERED, ADJUDGED and DECREED, that the ac-
count filed by said receiver in said cause be and
the same is hereby allowed and confirmed.

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And it appearing that the receipts of said re-
ceiver have amounted to \$7,000.00 and that his dis-
bursements have amounted to \$176.49 leaving a
cash balance in his hands of \$6,823.51;

Petition of Appeal.

It is ORDERED that said receiver be allowed for his services the sum of \$750.00; that counsel for complainant and said receiver be allowed the sum of \$750.00 together with the costs of these proceedings to be taxed; And it is further

ORDERED, that there be allowed to Joseph G. Wolber, as Master, for auditing the receiver's account, the sum of \$25.00. It is further

ORDERED, that after paying and satisfying the allowances hereinbefore awarded to said receiver, counsel, and master, the said receiver deposit the balance of the funds in his hands with the Clerk of the Court of Chancery, to abide the outcome of the proceedings now pending to determine the validity and priority of the respective mortgages and mechanic's lien claims, said fund to be ultimately distributed by the Clerk of the Court of Chancery, pursuant with an order of this Court, And it is further

ORDERED, that the said receiver file with the Clerk of this court a statement of his fees, disbursements and expenses in this proceeding, together with a statement and report of the distribution and disposition of the moneys that have come to his hands in this cause, and in case the receiver shall be unable to comply with the directions of this order in the payment or disbursement of any of the moneys aforesaid, he shall in such case deposit such moneys with the Clerk of this court, pursuant to the rules thereof.

And it is further ORDERED, ADJUDGED and DECREED, that upon making the payments and disbursements aforesaid, and carrying out the directions of this decree, the said receiver be discharged from all

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Petition of Appeal.

obligations in relation to said trust, except as to any money which may hereafter come to his hands as said receiver,"

10 And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that:

(1) The exceptions taken to the receiver's account should have been sustained and the account disallowed.

(2) The allowance of \$750.00 to the receiver is excessive.

20 (3) The allowance of \$750.00 to counsel for the complainant and receiver together with costs is excessive.

(4) The allowance to Joseph G. Wolber of \$25.00 for auditing the receiver's account is improper and should have been disallowed.

(5) The receiver should not have been discharged, because there are other properties, title to which is in his name as receiver which are still undisposed of.

30 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.

HENN & BURR,
Solicitors for and of counsel
with Appellant.

Answer to Petition of Appeal.NEW JERSEY COURT OF ERRORS AND
APPEALS.

<p style="text-align: center;">BURT DEVEAU, <i>Complainant,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">PIROZZI CONSTRUCTION CORPORATION, a New Jersey Corporation, <i>Defendant.</i></p>	<p>On Appeal from the Court of Chancery.</p>	<p>10</p>
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The answer of David Weinick, receiver for defendant-appellee, to petition of appeal filed herein:

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This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, admits that the decree appealed from was entered as alleged in the petition of appeal; this appellee is advised and believes that the said decree is agreeable to equity; and prays that the same may be confirmed with costs to be taxed in favor of this appellee.

DAVID BOBKER,
Solicitor for Appellee.

30

MAX H. HERBSTMAN,
Of Counsel with Appellee.

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Decree.

(Filed October 7, 1930.)

IN CHANCERY OF NEW JERSEY.

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Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey Corpora-
tion,*Defendant.*

76-344.

On Bill, &c.

Order Approving
Receiver's Ac-
count, Fixing
Allowance, &c.

20

An order to show cause having been made herein on the 16th day of September, 1930, why the report of the receiver of the above named defendant company should not be approved and the account and audit filed by him allowed, and why an order should not be made fixing and determining the fees and allowances of the said receiver in the administration of his trust, and fixing and determining the fees, costs and allowances of his counsel, and directing the deposit of the balance of the funds in the hands of said receiver with the Clerk of the Court of Chancery, to abide the outcome of the proceedings now pending to determine the validity and priority of the respective mortgages and mechanic's lien claims; and it appearing that the final report of said receiver, together with an audit of his account, has remained upon the files of the Sergeant-at-arms at the Chancery Chambers, No. 1060 Broad Street, in the City of Newark, in accordance with the directions of said order; and it appearing that copies of said order

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Decree.

to show cause, together with a notice of the filing of said account and a statement of the allowances to be asked by said receiver and his counsel as compensation for their services, have been mailed to each of the mortgagees and mechanic's lien claim creditors, or their attorneys, as far as the same could be ascertained, in accordance with the provisions of said order; and the matter having been continued until October 7th, 1930; and after hearing David Bobker, solicitor for receiver, David Weinick, receiver, Hood, Lafferty & Campbell, appearing by Mr. Schaffer, solicitors for mortgagee, and Henn & Burr, appearing by Mr. Henn, solicitors for mortgagee, and after considering argument of counsel, it is, on this 7th day of October, 1930, on motion of David Bobker, of counsel with the receiver,

ORDERED, ADJUDGED AND DECREED, that the account filed by said receiver in said cause be and the same is hereby allowed and confirmed.

And it appearing that the receipts of said receiver have amounted to \$7,000.00, and that his disbursements have amounted to \$176.49, leaving a cash balance in his hands of \$6,823.51;

IT IS ORDERED that said receiver be allowed for his services the sum of \$750.00; that counsel for complainant and said receiver be allowed the sum of \$750.00 together with the costs of these proceedings to be taxed;

And it is further

ORDERED, that there be allowed to Joseph G. Wolber, as Master, for auditing the receiver's account, the sum of \$25.00. It is further

ORDERED, that after paying and satisfying the al-

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Decree.

lowances hereinbefore awarded to said receiver, counsel, and master, the said receiver deposit the balance of the funds in his hands with the Clerk of the Court of Chancery, to abide the outcome of the proceedings now pending to determine the validity and priority of the respective mortgages and mechanic's lien claims, said fund to be ultimately distributed by the Clerk of the Court of Chancery, pursuant with an order of this Court. And it is further

ORDERED, that the said receiver file with the Clerk of this court a statement of his fees, disbursements and expenses in this proceeding, together with a statement and report of the distribution and disposition of the moneys that have come to his hands in this cause, and in case the receiver shall be unable to comply with the directions of this order in the payment or disbursement of any of the moneys aforesaid, he shall in such case deposit such moneys with the Clerk of this court, pursuant to the rules thereof.

And it is further ORDERED, ADJUDGED and DECREED, that upon making the payments and disbursements aforesaid, and carrying out the directions of this decree, the said receiver be discharged from all obligations in relation to said trust, except as to any money which may hereafter come to his hands as said receiver.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

Complaint.

(Filed November 29, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey Corporation,
Defendant.

On Bill, Etc.

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To his Honor EDWIN ROBERT WALKER, Chancellor
of the State of New Jersey.

20

Complainant, Burt Deveau, of Bloomfield, in the
County of Essex and State of New Jersey, in behalf
of himself and all other creditors of Pirozzi Con-
struction Corporation, the defendant corporation,
and the stockholders thereof, who shall come in
and contribute to the expenses of this suit, respect-
fully shows and alleges:

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1. That your complainant is a creditor of said
Pirozzi Construction Corporation to the extent of
\$475.00 for carpenter work performed in building
belonging to the defendant corporation located at
No. 378 Essex Avenue, Bloomfield, New Jersey, all
of which said sum is justly due and owing to com-
plainant from the said company.

2. That said Pirozzi Construction Corporation
is a corporation created and existing under and by
virtue of the laws of the State of New Jersey, and
was incorporated on or about the 3rd day of June,

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Complaint.

1929, under and pursuant to the terms and provisions of an act of the Legislature of the State of New Jersey entitled "An act concerning corporations (Revision of 1896)." Approved April 21, 1896, and the several acts amendatory thereof and supplemental thereto.

3. That the authorized capital stock of the Pirozzi Construction Corporation is \$20,000.00, divided into two hundred shares of the par value of \$100.00 each.

4. That said corporation was organized for the purpose of dealing in real estate and erecting and selling buildings.

20 5. The registered agent upon whom process is to be served is designated as Morris Klein, and the registered office is located at 185 Smith Street, in the City of Newark, New Jersey.

30 6. Complainant alleges that the defendant corporation engaged in the construction of a one family house situate at No. 378 Essex Avenue, Bloomfield, New Jersey; that said building is unfinished and is deteriorating in value and creditors may sustain losses as a result of fire or loss by theft.

7. Complainant further alleges that no work has been done on the said property for the past four or five weeks, that all work on said building has been abandoned, and complainant therefore alleges that the defendant corporation ceased functioning and doing business.

40 8. Complainant charges that the defendant corporation has suspended its business, in that the property, as aforesaid, has been abandoned, and work in connection with said property has ceased.

Complaint.

Complainant therefore charges that the defendant corporation has suspended its business for want of funds to carry on the same.

9. That by reason of the existing real estate market condition, this complainant charges that the liabilities of the company exceed the assets, and that the defendant company has no money or cash assets with which to meet its current obligations, and that it has exhausted all means of raising funds with which to continue the business. 10

10. Defendant corporation is unable by realizing upon its assets, even at a great sacrifice, to pay off its obligations, and this complainant therefore charges that the company is not only insolvent, but has suspended its ordinary business. 20

11. The assets of the company are subject to judgments, executions, foreclosures, and the building is also subject to loss by fire and the elements.

12. Complainant therefore charges that by reason of the aforesaid facts, it is absolutely imperative and necessary that a custodial receiver be appointed forthwith, and unless such custodial receiver is appointed that immediate and irreparable injury will result not only to complainant but all other creditors and stockholders. 30

Complainant is without adequate remedy at law and therefore prays:

1. That Pirozzi Construction Corporation, the defendant corporation in this suit, may answer this bill of complaint and each statement therein made.

2. That a decree may be made that complainant and other creditors and stockholders of said de- 40

Complaint.

defendant corporation be paid what is justly due them.

10 3. That said defendant corporation be enjoined from exercising any of its franchises and from receiving all its debts due it, from paying and transferring any of its moneys or effects, and from continuing its said business.

4. That the said defendant corporation may be declared to be insolvent, and that it may be decreed that it has suspended its ordinary business for want of funds to carry on the same.

5. That a receiver be appointed with the customary powers.

20 6. That the assets of the said defendant corporation and the rights of the complainant and other creditors and stockholders be ascertained.

30 7. That the court fully administer the funds, being the entire assets of the defendant corporation, and for that purpose marshal all its assets and ascertain all the liens or priorities, if any, and enforce the liens and rights of all the creditors and stockholders of said defendant corporation as the same may be finally ascertained.

8. That complainant may have such further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

40 9. That a writ of subpoena may be issued commanding the said defendant corporation to answer this bill of complaint and to abide by such decree as this court may make in the premises.

DAVID BOBKER,
Solicitor for Complainant.

LOUIS KLATZKO,
Of Counsel with Complainant.

Affidavit of Burt Deveau.

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

10 .

and

On Bill, &c.

PIROZZI CONSTRUCTION CORPORATION, a New Jersey corporation,
Defendant.

Defendant.

State of New Jersey, }
County of Essex, } ss.:

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BURT DEVEAU, being duly sworn, on his oath deposes and says:

1. I am the complainant in the above entitled suit.

2. My claim amounts to \$475.00 for carpenter work performed in building belonging to the defendant corporation located at No. 378 Essex Avenue, Bloomfield, Essex County, New Jersey.

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3. Defendant has not done any work on the property it has been erecting at No. 378 Essex Avenue, as aforesaid, for the past four or five weeks, and said defendant corporation has therefore ceased functioning and doing business.

4. The building is unfinished and is deteriorating in value and creditors may sustain losses as a result of fire or loss by theft.

5. The defendant corporation has no money

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Order to Show Cause.

with which to pay the amount due me or pay the amounts due for other items of labor and material and is therefore insolvent.

10 6. Defendant has no money in the bank and a receiver should be appointed forthwith for the purpose of protecting the interest of all creditors.

BURT DEVEAU.

Subscribed and sworn to before me }
this 27th day of November, 1929. }

CAROLINE PREUSS,
Notary Public of New Jersey.

20

Order to Show Cause.

(Filed Nov. 29, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

30 PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corpora-
tion,

Defendant.

On Bill, etc.

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This matter being opened to the court by David Bobker, Esq., solicitor of complainant, upon notice to said defendant, whereupon and upon reading and filing and considering the bill of complaint and affidavit annexed thereto and the court being satisfied of the sufficiency of the application made

Order to Show Cause.

in this cause and of the truth of the facts and allegations contained in said bill of complaint and sufficient cause having been shown for the making of this order, it is, on this 29th day of November, 1929,

ORDERED, that the defendant, Pirozzi Construction Corporation, a New Jersey corporation, show cause before the Chancellor at the Chancery Chambers, Industrial Office Building, 1060 Broad Street, Newark, New Jersey, on Tuesday the 3rd day of December, 1929, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue according to the prayer of the bill of complaint, and why a receiver should not be appointed for the said Pirozzi Construction Corporation according to the statute in such case made and provided. It is further

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ORDERED, that until this order should be absolute or discharged the said Pirozzi Construction Corporation, its officers, servants and agents, absolutely desist and refrain, and they are hereby enjoined and restrained from contracting any debts and from collecting and receiving any money owing to the defendant corporation, and also from paying out any money, or selling, assigning or transferring any of the property, estate or effects of the said corporation. It is further

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ORDERED, that a copy of the bill of complaint, the affidavit thereunto annexed, as well as a copy of this order, which copies may be certified by the solicitor of the complainant, be served upon the said defendant corporation, within two days after the date hereof.

E. R. WALKER,

40

C.

Respectfully advised,

ALONZO CHURCH,

V. C.

**Order Adjudging Insolvency and Appointing
Receiver.**

(Filed December 3, 1939.)

IN CHANCERY OF NEW JERSEY.

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Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corpora-
tion,

Defendant.

On Bill, &c.

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This matter being opened to the court by David Bobker, solicitor for the complainant, and it appearing that a copy of the bill of complaint and of the order to show cause made thereon, has been duly served within the time and as required by said order to show cause, on Morris Klein, the resident agent of said defendant company, and upon Philip Pirozzi, the president of said defendant company.

30

And it further appearing to the court that the said corporation has become insolvent and is not able to resume its business in a short time with safety to the public and advantage to the stockholders:

It is, on this 3rd day of December, 1929, on motion as aforesaid,

40

ORDERED, that the said Pirozzi Construction Corporation be and it is hereby declared insolvent, and that an injunction issue against the defend-

Order Adjudging Insolvency.

ant corporation according to the prayer of the bill of complaint, and that the said Pirozzi Construction Corporation, its officers, servants and agents, absolutely desist and refrain, and they are hereby enjoined and restrained from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by this court.

10

And it is further ORDERED, that George D. Moore, Jr., of Newark, in this State, be and he is hereby appointed receiver for the creditors and stockholders of the said defendant corporation, with all the powers incident thereto, and that he do and perform all the duties imposed upon him and required by law and especially by an act entitled "An act concerning corporations (Revision of 1896)," and the acts supplementary thereto and amendatory thereof.

20

And it is further ORDERED that the said receiver, before he shall enter upon his duties as such receiver, shall take the oath prescribed by law, and give a bond to the Chancellor of the State of New Jersey, in the sum of One Thousand Dollars, conditioned for the faithful performance of his duties, to be approved as to form and security thereof by Richard Stockton, one of the Special Masters of this court.

30

And it is further ORDERED that the creditors and stockholders of the defendant corporation show cause before this court on Tuesday, the 10th day of December, instant, at ten o'clock in the forenoon of that day, or as soon thereafter as the matter can be heard, at the Chancery Chambers, in the Indus-

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Receiver's Petition for Retention of Counsel.

10 trial Office Building, 1060 Broad Street, Newark,
N. J., why the said receiver should not be continued
or why some other person should not be appointed
receiver in his place or with him as co-receiver,
and that a copy of this order (which need not be
certified) be mailed to all the creditors and stock-
holders of the defendant corporation at their last
known post-office address within three days after
the date hereof.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

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Receiver's Petition for Retention of Counsel.

(Filed December 4, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corpora-
tion,

Defendant.

30

76/344
On Bill, &c.

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

40

The Petition of the undersigned shows and al-
leges:

Receiver's Petition for Retention of Counsel.

1. On December 3, 1929, an order was entered herein designating your petitioner as receiver for the defendant corporation.

2. Petitioner has qualified by filing the required bond and has taken possession of the defendant's assets. 10

3. Petitioner alleges that the officers of the defendant corporation should be examined, and that investigation should be made concerning the assets of the defendant company.

4. Your petitioner is not an attorney, and believes that David Bobker, who is a solicitor of this court, and is fully familiar with the practice prevailing in this court, is a suitable person to be designated as counsel for your petitioner in this proceeding. 20

WHEREFORE, petitioner prays for the entry of an order authorizing and permitting him to retain David Bobker as counsel.

GEORGE D. MOORE, JR.,
Petitioner.

State of New Jersey, }
County of Essex, } ss.: 30

GEORGE D. MOORE, JR., being duly sworn, on his oath deposes and says, that he is the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof and the same are true to the best of his knowledge and belief.

GEORGE D. MOORE, JR.

Subscribed and sworn to before me }
. this 3rd day of December, 1929. } 40

CAROLINE PREUSS,
A Notary Public of New Jersey.

Order Appointing Counsel.

(Filed December 4, 1929.)

IN CHANCERY OF NEW JERSEY.

10	Between BURT DEVEAU, <i>Complainant,</i> and PIROZZI CONSTRUCTION CORPORA- TION, a New Jersey corporation, <i>Defendant.</i>	}	On Bill, &c.
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20 Upon reading and filing the receiver's petition for leave to retain counsel, and sufficient reason appearing for the entry of this order, it is, on this 4th day of December, 1929,

 ORDERED; that George D. Moore, Jr., receiver, be and he is hereby authorized and permitted to retain as his solicitor, David Bobker, Esq.

E. R. WALKER,
C.

30 Respectfully advised,

 ALONZO CHURCH,
 V. C.

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Affidavit of Frederick C. Henn.

(Filed December 27, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corporation,
Defendant.

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On Bill, Etc.

State of New Jersey, }
County of Hudson, } ss.:

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I, Frederick C. Henn, of full age, being duly sworn upon my oath depose and say:

I am one of the holders of a second mortgage encumbering the premises, upon which there is due the principal sum of \$3,432.00 and interest, which premises are owned by the Pirozzi Construction Company, which mortgage has been postponed to a first mortgage of the Fidelity Union Title and Mortgage Guaranty Company in the sum of \$10,000.00, which latter mortgage was and still is being used for the construction of the one family frame and brick veneer building erected upon a plot 150 feet in depth and 53 feet wide fronting on the westerly side of Essex Avenue, Bloomfield, Essex County, New Jersey. I have sold tracts of lands in the immediate vicinity and am familiar with the market value of the property fronting on Essex Avenue in the Township of Bloomfield. Lots on said street have sold at \$80.00 per foot, bringing

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Affidavit of Frederick C. Henn.

the value of the lot owned by the defendant company of \$3,400.00.

10 I have inspected the building. The same is completed with the exception of placing the plumbing fixtures, hanging doors, fixtures and decoration, and in my judgment will not cost more than \$2,500.00.

There has been advanced on the first mortgage the sum of \$3,000.00 and the mortgage company now stands ready to advance the balance of the principal amounting to \$7,000.00 when the building has been completed.

20 According to the terms of the mortgage held by Robert Broadman and myself, which was a purchase money mortgage, there was to have been paid the sum of \$500.00 on account of the principal when the mortgage was postponed to that of the mortgage held by the Fidelity Union Title and Mortgage Guaranty Company. When said postponement was delivered to Philip Pirozzi, the president of the Pirozzi Construction Company, he delivered a check for the sum of \$500.00 and interest, which was to be credited on account of the mortgage. When said check was presented to
30 the bank upon which it was drawn I was informed that there was no such account with the said bank, and therefore, the check was not paid. There has been nothing, therefore, paid on account of the principal of said mortgage, although the company had used the postponement and represented to the Fidelity Union Title and Mortgage Guaranty Company that the principal of said mortgage had been reduced by the amount of said check. After presentation of the check for payment to the bank I
40 immediately communicated with the said Philip Pirozzi and informed him that he had delivered

Affidavit of Frederick C. Henn.

his check to my office, which was presented to the bank and payment refused. Since that date he has not made good the check although on various occasions he has called at my office and tried to negotiate for the continuance of the said mortgage as a second lien upon said premises.

10

During said negotiations the said Philip Pirozzi represented to me that the company was not indebted for more than \$4,000.00, which indebtedness arose in the construction of this building, and that to complete the building it would not cost more than \$2,500.00. The total indebtedness after the building is completed of the company will be about \$6,500.00. The balance due from the Fidelity Union Title and Mortgage Company is \$7,000.00. Mr. Pirozzi also informed me that the company had invested in said premises over \$5,000.00 of its own cash as well as an additional investment made by him.

20

The said Philip Pirozzi, during the negotiations, informed me that his attorney was Paul E. Giordano, a member of the Bar of the State of New Jersey, and that he would communicate with me regarding the terms of the second mortgage. During the said negotiations with the said attorney, he forwarded to me an affidavit of Philip Pirozzi, of which the attached is an exact true copy, which I have in my possession, wherein the said Philip Pirozzi, under oath, stated that the total indebtedness of the company with the completed house would not be more than \$6,300.00.

30

I am familiar with the value of construction, having been directly interested in many building companies and was instrumental in the development of the adjoining lots to that owned by the company and in my opinion the building when

40

Affidavit of Frederick C. Henn.

completed will sell for not less than \$18,000.00, and in the Spring season would sell for not less than \$20,000.00.

10 Mr. Broadman who is co-owner of the mortgage with me had offered to complete the building for said company for the amount representing the unpaid balance of the Fidelity Union Title and Mortgage Guaranty Company and had also offered to give the company an opportunity of selling said property for anything that would be sufficient to pay his mortgage. Said proposition was still pending when the application for the appointment of a receiver was made in this Court.

FREDERICK C. HENN.

20 Sworn and subscribed to before me }
this 13th day of December, 1929. }

ALFRED L. KETTELL,
Attorney at Law of N. J.

30

40

Affidavit of Robert Broadman.

(Filed Dec. 27, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey Corpora-
tion,
Defendant.

10

On Bill, Etc.

20

State of New Jersey, }
County of Hudson, } **ss.:**

ROBERT BROADMAN, of full age, being duly sworn upon his oath deposes and says:

I am one of the holders of a second mortgage encumbering the premises of the Pirozzi Construction Company. The value of the said lot fronting on Essex Avenue, Bloomfield, Essex County, New Jersey, is \$75.00 per front foot and lots on that street are selling for \$80.00 per foot. I have been in the building business for the past twenty years or more, having constructed hundreds of dwelling houses in and about Essex County and am familiar with the cost of building materials used in the construction of the one family houses of the type constructed by the said company on the westerly side of Essex Avenue, Bloomfield.

30

I have inspected said house within the past few days. It is a one family brick veneer and frame dwelling, two and one-half stories. Said building

40

Affidavit of Robert Broadman.

in my estimation would not cost more than \$12,500.00 to build. The building has been constructed to the placing of plumbing fixtures, tile, hanging fixtures and the heating. The material to do this work has already been delivered to the premises.

10 In my opinion it will not cost more than \$2,500.00 to complete the building to make it ready for occupancy.

I have on several occasions interviewed Mr. Philip Pirozzi, the president of the Pirozzi Construction Company, the last interview being about two weeks ago, at which time the said Philip Pirozzi admitted to me that there was ample money in the hands of the Fidelity Union Title and Mortgage Guaranty Company, to complete the building and pay all persons who have supplied labor and material to the building in full, and in addition to pay on account of the mortgage which I and Frederick C. Henn hold upon the said premises, the sum of \$1,000.00.

20

In my opinion, after the building is completed, it ought to sell for not less than \$18,000.00 in this season of the year, and in the Spring time for a sum not less than \$20,000.00.

I had been interviewed by George S. Phoebus, a dealer in real estate in Bloomfield, on December 10th, 1929, and he informed me that he was negotiating with a prospective purchaser for the sale of the house in a finished condition and expects to realize a price to the company of about \$20,000.00.

30

I am now willing and have been and have communicated same to the said Philip Pirozzi that I could complete the building with the unpaid balance of the mortgage held by the Fidelity Union Title and Mortgage Guaranty Company, if necessary, leaving a balance of money to be applied

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Affidavit of Philip Pirozzi.

on account of the principal of my mortgage, and said negotiations were under way when the application for the appointment of a receiver in this matter was made.

ROBERT BROADMAN.

Sworn and subscribed to before me }
 this 12th day of December, 1929. }

10

F. A. SULLIVAN,
 Notary Public of New Jersey.

Affidavit of Philip Pirozzi.

(Filed December 27, 1929.)

IN CHANCERY OF NEW JERSEY.

20

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
 TION, a New Jersey Corpora-
 tion,

Defendant.

On Bills, Etc.

30

State of New Jersey, }
 County of Essex, } ss.:

PHILIP PIROZZI, being duly sworn on his oath according to law, deposes and says:

I reside at 507 East 53rd Street, Brooklyn, Kings County, New York; I am the president of the Pirozzi Construction Company, a corporation of New Jersey, owners and builders of the one family

40

Affidavit of Philip Pirozzi.

brick veneer and frame dwelling house situate on the premises located at Essex Avenue, in the Town of Bloomfield, Essex County, and more particularly known and designated as No. 280 Essex Avenue, Bloomfield, N. J.

10 I have had and still have actual charge of the construction work and I entered into all agreements for the furnishing of material and labor in connection with the erection and construction of said house and I am familiar with the value of the work already done on said house and the amount required to complete the same.

The said house is incumbered by a mortgage held by Fidelity Union Title & Mortgage Guaranty Co., of Newark, New Jersey, in the sum of Ten Thousand (\$10,000.00) Dollars, in addition to the original land mortgage. The said Fidelity Union Title & Mortgage Guaranty Co., has paid out on account of its Ten Thousand (\$10,000.00) Dollar mortgage the sum of Three Thousand (\$3,000.00) Dollars, leaving a balance in its hands of Seven Thousand (\$7,000.00) Dollars.

30 The following persons with the amounts set opposite there respective names are the only persons who have right of mechanic's lien against said premises;

	Gaetano Del Russo	\$50.00
	Richard Vannoy	75.00
	Essex Lumber	200.00
	Burt Deveau	300.00
	Ralph Baroni	100.00
	John Gayner	1,130.00
	B. Hochman	75.00
	Guader	100.00
40	William Clark	651.00
	Mason Lath	170.00
	Lawson & MacMurray	990.00

\$3,841.00

Affidavit of Philip Pirozzi.

Except the above persons, I owe no other money (except the land mortgage) for materials and labor already furnished in the construction of said house.

To complete the said house, it will cost the following sums:

Excavations	\$100.00	
Mason	75.00	
Trim	240.00	
Carpenter	250.00	
Painter	400.00	
Tile	500.00	
Plumber	420.00	
Electrical	175.00	
Hardware	75.00	20
Range	50.00	
Oil Cloth	20.00	
Floor Scraper	40.00	
Mason Materials	100.00	
	<hr/>	
	\$2,445.00	

There is more than sufficient amount of money in the hands of the Fidelity Union Title & Mortgage Guaranty Co., to pay for the present existing claims and the amount required to complete the building as stated in the above lists, the total of which amounts to approximately \$6,286.00.

(sgd.) PHILIP PIROZZI.

Sworn and subscribed to before me this }
14th day of November, A. D. 1929. }

(sgd.) RALPH E. GIORDANO,
A Master in Chancery of New Jersey.

Order Continuing Appointment of Receiver.

(Filed December 27, 1929.)

IN CHANCERY OF NEW JERSEY.

10	Between <div style="text-align: center;"> BURT DEVEAU, <i>Complainant,</i> </div> <div style="text-align: center; margin-top: 10px;"> and </div> <div style="text-align: center;"> PIROZZI CONSTRUCTION CORPORA- TION, a New Jersey corporation, <i>Defendant.</i> </div>	} } 76-344. } On Bill, &c.
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20 This matter being opened to the court by David
 Bobker, solicitor of the above-named complainant,
 and an order having been made in this cause on
 the 3rd day of December, 1929, wherein, among
 other things, the creditors and stockholders of the
 defendant corporation were ordered to show cause
 before this court on Tuesday, the 10th day of De-
 cember, 1929, at ten o'clock in the forenoon of that
 day, or as soon thereafter as this matter can be
 heard, at the Chancery Chambers, in the Industrial
 30 Office Building, 1060 Broad Street, Newark, New
 Jersey, why George D. Moore, Jr., the receiver
 heretofore appointed in this cause, should not be
 continued or why some other person should not
 be appointed receiver in his place or with him as
 a co-receiver; and proof of mailing of a copy of
 said order to the creditors and stockholders of said
 defendant corporation being now presented to the
 court, and being duly filed, and no cause being
 shown to the contrary:

40 It Is, on this 27th day of December, 1929,

Order of Substitution.

ORDERED, that George D. Moore, Jr., be and he is hereby continued as receiver of the above-named defendant corporation, with all the powers and authorities incident thereto, and conferred upon him by the order heretofore made appointing him receiver, and especially by the act entitled "An act concerning corporations (Revision of 1906)" and the supplements thereto and amendatory thereof, and that his bond be continued. 10

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C. 20

Order of Substitution.

(Filed January 21, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

On Bill, &c. 30

This matter being opened to the court by David Bobker, solicitor for complainant, and it being represented to the court that it is for the best interest of creditors and stockholders that another 40

Order of Substitution.

receiver be appointed in lieu of the present and existing receiver, it is, on this 21st day of January, 1930,

10 ORDERED, that David Weinick, Esq., of Newark, New Jersey, be and he is hereby appointed receiver for the creditors and stockholders of the said defendant corporation, with all the powers incident thereto, and that he do and perform all the duties imposed upon him and required by law and especially by an act entitled "An act concerning corporations (Revision of 1896)" and the acts supplementary thereto and amendatory thereof. And it is further

20 ORDERED, that the said receiver, before he shall enter upon his duties as such receiver, shall take the oath prescribed by law, and give a bond to the Chancellor of the State of New Jersey, in the sum of One Thousand Dollars, conditioned for the faithful performance of his duties, to be approved as to form and security thereof by Richard Stockton, one of the special masters of this court. It is further

30 ORDERED, that George D. Moore, Jr., be and he is hereby discharged as receiver of defendant corporation and the bond he gave in connection with his duties as receiver be and the same is hereby considered as cancelled and of no effect, and that the bond to be given by the substituted receiver shall be used in lieu of the bond already on file in this cause.

E. R. WALKER,
C.

Respectfully advised,

40 ALONZO CHURCH,
V. C.

Appraisers' Report.

(Filed February 4, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

10

76-344.

On Bill, &c.

We, the undersigned, having been designated as appraisers, do hereby attach a communication representing the result of our appraisal. 20

Respectfully submitted,

LOUIS E. GOLDFARB,
SAMUEL HAMBURGER.

30

40

Letter Annexed to Appraiser's Report.

LOUIS E. GOLDFARB, INC.
 Real Estate and Mortgages
 965 Broad Street
 Newark, N. J.

10

Telephone Market 8840

January 27, 1930.

Mr. David Bobker,
 972 Broad Street
 Newark, New Jersey.

Dear Mr. Bobker:

20

After inspecting the house designated by you on Essex Street, Glen Ridge for the purpose of an appraisal, I have found the following work necessary to complete the house. Decorating, lighting fixtures, doors and trim, scraping and finishing floors, some plastering, tile and marble work, screens and shades, cellar bottom, plumbing and heating, cementing of driveway, and grading and sodding, rubber floor in Kitchen.

The above mentioned work will cost \$4,000. This means absolute completion.

30

When the work as enumerated above is put into the house, the house will then have a quick sale value of \$15,000.

40

Without having an actual survey of the plot of the ground that the house is built on, it looks to me like you have fifty feet front and one hundred fifty feet in depth. I place a value of \$60. per front foot on the ground, making a total of \$3,000. for the ground. When the house is fully completed as enumerated above, the reproduction value will exceed \$13,000. making a net conservative cost value of a little over \$16,000.

Petition to Sell Real Estate.

When I say that you have a quick sale value of \$15,000. on the house, I mean that you have eliminated all overhead and builders profits, plus over \$1,000. loss in actual cost value.

Hoping the above is what you desired in the way of an appraisal, I beg to remain

10

Sincerely yours,

Samuel Hamburger Louis E. Goldfarb

LEG:SF

Petition to Sell Real Estate.

(Filed February 20, 1930.)

IN CHANCERY OF NEW JERSEY.

20

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

76/344.

On Bill, &c.

30

To Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The petition of David Weinick respectfully shows:

1. Your petitioner is the duly appointed, qualified and acting receiver of the defendant corporation.

40

Petition to Sell Real Estate.

2. Defendant corporation became the owner of the following tracts of land:

Premises in the Town of Bloomfield, County of Essex and State of New Jersey:

10 BEGINNING at a point on the westerly side of Essex Avenue distant 426.95 feet South from the corner formed by the intersection of the westerly side of Essex Avenue with the southerly side of Glen Ridge Parkway; thence running (1) southerly and along the westerly side of Essex Avenue 212 feet to a point; thence running (2) westerly at right angles to the westerly side of Essex Avenue 110 feet to a point; thence running (3) northerly and parallel with Essex Avenue 212 feet to a point; 20 thence running (4) easterly and at right angles to the last line 110 feet to the westerly side of Essex Avenue, the point and place of BEGINNING.

BEING known as lots No. 125 to No. 128, inclusive, on map of property of Broadman & Henn, Section Three, Montrose Park, situated in Glen Ridge and Bloomfield, N. J. made by Ernest Baechlin and filed in the Register's Office of Essex County.

30 Subject to Bloomfield zoning ordinances and following restrictions:

(1) No more than one house shall be erected on plot less than 50 feet in width.

(2) No house less than two stories and with cellar and must not have flat roof, and not more than 2½ stories, which cost at least \$15,000.00 and not less shall be erected.

40 (3) No building shall be erected other than a one family dwelling and a private garage.

Petition to Sell Real Estate.

(4) No building shall be erected less than 25 feet from building line nor within 4 feet to one side of the line and 8 feet on other side of line.

(5) No wooden or iron fences shall be put in front of said lot and no hedges, shrubs or bushes over 4½ feet. 10

(6) Grantor reserves right to give permission for telephone or electric wires in rear of said lot.

These restrictions run with land until January 1, 1943.

Subject to: \$3,432.00 mortgage—Lot No. 125

Subject to: \$3,432.00 mortgage—Lot No. 126

Subject to: \$3,432.00 mortgage—Lot No. 127

Subject to: \$3,432.00 mortgage—Lot No. 128 20

Subject to \$2,472.00 blanket mortgage on all of the lots above as a purchase money mortgage.

3. After defendant acquired title in and to the aforesaid land, it proceeded to erect a one family building for dwelling purposes, and said building is not completed, and said building was erected upon a portion of the aforesaid tract, said portion being described as follows: (For purposes of convenience, lots 126, 127 and 128 shall be referred to as tract "A" and Lot 25, upon which the unfinished building is located, will be referred to as tract "B") : 30

BEGINNING on the westerly side of Essex Avenue, distant 325 feet northerly on a course of north 16 degrees 37 minutes East from the northerly side of Avon Terrace; thence North 16 degrees 37 minutes East along the westerly side of Essex Avenue 53 feet; thence North 73 degrees 23 minutes West 110 feet to a point; and corner; thence south 73 de- 40

Petition to Sell Real Estate.

grees 23 minutes East 110 feet to the westerly side of Essex Avenue and point and place of BEGINNING.

10 4. Your petitioner caused an examination to be made of the title to said property, and an investigation to be made into the affairs of the said corporation, and finds that at the present time the said properties are encumbered as follows:

TRACT "A"—Lots 126, 127 and 128 are each covered by a first mortgage in the sum of \$3,432.00, originally given by Metropolis Holding Company to Robert Broadman and Fred C. Henn, each of which said mortgages was assigned to one Florence A. Sullivan by assignment dated September 16, 1929.

20 Said lots 126, 127 and 128 (TRACT "A") are also encumbered by a blanket mortgage in the sum of \$2,472.00, originally given to Upper Ridgewood Development Co., and assigned to one, Benjamin Handelman and Andonia Alongi, said assignment being dated August 17, 1929, and recorded in book 208 of Assignment of Mortgages, Essex County Register's Office, page 290.

30 TRACT "B"—which is lot 125, and upon which the unfinished building is located, is encumbered by a first mortgage held by Fidelity Union Title & Mortgage Guaranty Co., in the nominal sum of \$10,000.00, recorded in the Register's Office of Essex County in Book K 68 of Mortgages, page 331, and upon which mortgage there has been advanced approximately \$3,000.00, leaving a balance of \$7,000.00 to be advanced for the purposes of completion of said building.

40 The aforesaid Tract "B", Lot 125, is also encumbered by a second mortgage held by Florence A.

Petition to Sell Real Estate.

Sullivan, in the principal sum of \$3,432.00, the original mortgage having been assigned to Florence A. Sullivan, said assignment being recorded in the Register's Office of Essex County in Book C 66 of Assignment of Mortgages, pages 136, etc. 10

Said Tract "B", lot 125, is also subject to the blanket mortgage of \$2,472.00 covering lots 125, 126, 127 and 128, which said mortgage was originally given to the Upper Ridgewood Development Company and assigned as aforesaid.

Petitioner has been informed and believes that lot No. 125 may be released, upon payment of one-fourth of the amount of said blanket mortgage.

On August 30, 1929, Robert Broadman and Frederick C. Henn, prior to the assignment of the \$3,432.00 mortgage covering Tract "B", to Florence A. Sullivan, signed, executed and delivered a postponement of the lien of the mortgage of \$3,432.00 covering Tract "B", Lot 125, in favor of a first mortgage given to the Fidelity Union Title & Mortgage Guaranty Co. in the principal sum of \$10,000.00, which said postponement was recorded on September 9, 1929, in the Essex County Register's Office in Book 109 of Release of Mortgages, page 353. 20 30

On November 22, 1929, Max Block filed a mechanic's lien against Tract "B" which said lien was recorded in the Essex County Clerk's Office in Book M L 27, page 353, the amount of said lien being \$160.00.

On January 23, 1930, William Clark, trading as Clark Roofing Co., filed a mechanic's lien against Tract "B" which said lien was recorded in the Essex County Clerk's Office in Book M L 27, page 551, the amount of said lien being \$695.00. 40

Petition to Sell Real Estate.

On February 10, 1930, Walter A. Pitt filed a mechanic's lien against Tract "B" which said lien was recorded in the Essex County Clerk's Office in Book M L 28, page 26, the amount of said lien being \$1,130.00.

10

5. Petitioner further sets forth that on June 20, 1929, defendant corporation entered into a written contract with one, Sam Volpe, and which said contract was filed on June 21, 1929, in the Essex County Clerk's Office, said contract being known as No. 852, and, according to the terms of said contract, Sam Volpe agreed to do and finish all mason, carpentry, plumbing, heating, electrical, painting and all other work, with the exception of excavating foundation, for the sum of \$15,200.00, said house to be erected on Lot No. 125 as aforesaid, and on June 21, 1929, the specifications, together with the written contract, were filed.

20

6. Petitioner alleges that Fidelity Union Title & Mortgage Guaranty Co. has signified its willingness to pay out the balance of money it holds, upon completion of the aforesaid building, and petitioner charges that by reason of the execution of postponement by Broadman & Henn, as aforesaid, that your petitioner, as receiver, is entitled to receive the balance due from the Fidelity Union Title & Mortgage Guaranty Co. for completion and administration purposes.

30

7. Petitioner alleges that by reason of the filing of the written general contract, for the erection and construction of the buildings as aforesaid, with the County Clerk, that the parties who filed lien claims are not legally entitled to prosecute their claims, and that said claims are and will be disputed.

40

Petition to Sell Real Estate.

8. Petitioner charges that Sam Volpe is the only person who could file a lien, and that the remedy of the various other sub-contractors and materialmen is to serve stop notices, not to file mechanic's liens.

10

9. Petitioner therefore charges that the aforesaid lien claims are disputed and that said liens are brought into question and dispute.

10. Petitioner alleges that the building is exposed to the elements, subject to loss by fire and theft, and it is necessary that immediate steps be taken for the completion of the said building, so that the same may be offered for sale; and unless the completion of said unfinished building is ordered, all interested parties will suffer irreparable damage, and in the meantime, the property is deteriorating in value.

20

11. Your petitioner is therefore of the opinion that it will be for the best interest of creditors and all other parties that lots 126, 127 and 128 be sold at public auction or private sale, subject to all liens and encumbrances, and that with relation to the unfinished building on lot 125, that the said building be completed, and/or that the said building be offered in an uncompleted condition, for sale to the highest bidder or bidders therefor, subject to all liens, but free and clear of the rights of mechanics' lien claimants, the liens of said mechanics' lien claimants, if any, to attach to the proceeds of sale.

30

12. Your petitioner is of the opinion that the said unfinished buildings should be completed, for which purpose the funds still remaining in the hands of the Fidelity Union Title & Mortgage Guar-

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Petition to Sell Real Estate.

10 anty Co. may be used, and that expenses of administration, in connection with the completion of said building be deducted from said fund, after paying for the cost of completion, so that the liens of the second and third mortgagees will then attach to a completed building, and the liens of the mechanics' lien claimants will then attach to the proceeds realized after selling the completed building.

Your petitioner therefore prays for relief in the alternative, as follows:

A. An order to sell Tract "A" subject to liens, at public or private sale.

20 B. An order to sell Tract "B" with the covenant for either a public or private sale, subject to existing liens, but free and clear of mechanics' lien claims, said mechanics' lien claims, if any, to attach to the proceeds of sale; or

30 C. An order authorizing completion of the building located on Lot 125, in accordance with existing plans and specifications, moneys for the completion to be procured by the advances to be made on account of the Fidelity Union Title & Mortgage Guaranty Co. mortgage, said moneys to be advanced by the Fidelity Union Title & Mortgage Guaranty Co. to be used solely and only for completion purposes and for administration expenses.

40 In the event that petitioner is directed to complete the building, he prays that the order providing for completion also contain a proviso directing a public or private sale of said building after completion, subject to all liens and encumbrances, but free, clear and discharged of the liens

Petition to Sell Real Estate.

of mechanics' lien claimants, their liens, if any, to attach to the proceeds of sale.

DAVID WEINICK,
Petitioner.

State of New Jersey, }
County of Essex, } ss.:

10

DAVID WEINICK, being duly sworn, on his oath deposes and says, that he is the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof and the same are true to the best of his knowledge and belief.

DAVID WEINICK.

20

Subscribed and sworn to before me }
this 19th day of February, 1930. }

CAROLINE PREUSS,
A Notary Public
of New Jersey.

30

40

Order to Show Cause.

(Filed February 20, 1930.)

IN CHANCERY OF NEW JERSEY.

10

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

76/344.

On Bill, &c.

20

David Weinick, the receiver herein, having this day filed his petition herein, from which it appears that the defendant corporation, at the time of the appointment of the receiver, was the owner of properties more particularly described in the petition, and after considering the contents of said petition, and sufficient reason appearing for the entry of this order, it is, on this 20th day of February, 1930,

30

ORDERED: that all of the stockholders, mortgagees, lien claimants, lienholders, creditors and parties in interest specifically mentioned in the petition appear before this Honorable Court, at the Chancery Chambers, Industrial Office Building, 1060 Broad Street, Newark, New Jersey, on February 25th, 1930, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, and show cause why the prayer of the said petition filed herein should not be granted, or why the petitioner therein should not have such other and further relief as to the court may seem just and equitable in the premises; and it is further

40

Order to Show Cause.

ORDERED: that a copy of this order, together with a copy of the aforementioned petition (which need not be certified except by the solicitor for the receiver) be served upon the mortgagees, or their solicitors, within three days from the date hereof, and that a copy of this order (which may be certified by solicitor for the receiver) be served upon stockholders, lien claimants and creditors, by mailing a copy thereof to each of them or their respective solicitors, within three days from the date hereof.

10

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

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30

40

Receiver's Petition for Retention of Counsel.

(Filed April 1, 1930.)

IN CHANCERY OF NEW JERSEY.

10

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corporation,
Defendant.

76-344.

On Bill, &c.

20

To his Honor, EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The petition of David Weinick respectfully shows and alleges:

30

1. That on January 21st, 1930, an order was entered herein designating your petitioner as receiver for the defendant corporation in place and instead of George D. Moore, Jr.

2. Your petitioner has qualified by filing the required bond and has taken possession of the defendant's assets.

3. Petitioner alleges that the officers of the defendant corporation should be examined, and that investigations should be made concerning the assets of the defendant company.

40

4. Your petitioner believes it necessary that he be permitted to retain counsel to represent him in this proceeding, and believes that David Bobker, who is a solicitor of this court, and is fully familiar with the practice prevailing in this court, is a suit-

Receiver's Petition for Retention of Counsel.

able person to be designated as counsel for your petitioner.

WHEREFORE, petitioner prays for the entry of an order authorizing and permitting him to retain David Bobker as counsel.

DAVID WEINICK,
Petitioner.

10

State of New Jersey, }
County of Essex, } ss.:

DAVID WEINICK, being duly sworn, on his oath deposes and says, that he is the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof and the same are true to the best of his knowledge and belief.

20

DAVID WEINICK.

Subscribed and sworn to before me }
this 28th day of March, 1930. }

CAROLINE PREUSS,
A Notary Public of New Jersey.

30

40

Order Appointing Counsel.

(Filed April 5, 1930.)

IN CHANCERY OF NEW JERSEY.

10

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION, a New Jersey Corporation,
Defendant.

On Bill, &c.

20

On reading and filing the receiver's petition for leave to retain counsel, and sufficient reason appearing for the entry of this order, it is, on this 1st day of April, 1930,

ORDERED, that David Weinick, receiver, be and he is hereby authorized and permitted to retain as his solicitor David Bobker.

E. R. WALKER,

C.

30

Respectfully advised,

ALONZO CHURCH,
V. C.

40

**Petition to Sell Real Estate Free and Clear
of Liens.**

(Filed April 1, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corporation,
Defendant.

10

76-344.

On Bill, &c.

20

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

The petition of David Weinick respectfully
shows:

1. Your petitioner is the duly appointed, quali-
fied and acting receiver of the defendant corpora-
tion. On February 20th, 1930, your petitioner
made application to sell real estate belonging to
defendant, hereinafter referred to, subject to cer-
tain liens and free and clear of other liens, or, in
the alternative, to complete the building, the
matter came up for hearing on February 25th,
1930, and said matter was taken under advisement,
and since the filing of the petition your petitioner
has ascertained that the various lien claims and
mortgages covering the property are disputed and
for said reasons petitioner files this application to
sell free and clear of liens.

30

2. Defendant corporation became the owner of
the following tracts of land:

40

Petition to Sell Real Estate Free and Clear of Liens.

Premises in the Town of Bloomfield, County of Essex and State of New Jersey:

10 BEGINNING at a point on the westerly side of Essex Avenue distant 426.95 feet South from the corner formed by the intersection of the westerly side of Essex Avenue with the southerly side of Glen Ridge Parkway; thence running (1) southerly and along the westerly side of Essex Avenue 212 feet to a point; thence running (2) westerly at right angles to the westerly side of Essex Avenue 110 feet to a point; thence running (3) northerly and parallel with Essex Avenue 212 feet to a point; thence running (4) easterly and at right angles to the last line 110 feet to the westerly side of Essex Avenue, the point and place of BEGINNING.

20

Being known as lots No. 125 to No. 128 inclusive, on map of property of Broadman & Henn, Section three, Montrose Park, situated in Glen Ridge and Bloomfield, N. J. made by Ernest Baechlin and filed in the Register's Office of Essex County.

Subject to Bloomfield zoning ordinances and following restrictions:

30 (1) No more than one house shall be erected on plot less than 50 feet in width.

(2) No house less than two stories and with cellar and must not have flat roof, and not more than 2½ stories, which cost at least \$15,000.00 and not less shall be erected.

(3) No building shall be erected other than a one family dwelling and a private garage.

40 (4) No building shall be erected less than 25 feet from building line nor within 4 feet to one side of the line and 8 feet on other side of line.

Petition to Sell Real Estate Free and Clear of Liens.

(5) No wooden or iron fences shall be put in front of said lot and no hedges, shrubs or bushes over 4½ feet.

(6) Grantor reserves right to give permission for telephone or electric wires in rear of said lot.

10

These restrictions run with land until January 1, 1943.

Subject to: \$3,432.00 mortgage—lot No. 125

Subject to: \$3,432.00 mortgage—lot No. 126

Subject to: \$3,432.00 mortgage—lot No. 127

Subject to: \$3,432.00 mortgage—lot No. 128

Subject to \$2,472.00 blanket mortgage on all of the lots above as a purchase money mortgage.

20

3. After defendant acquired title in and to the aforesaid land, it proceeded to erect a one family building for dwelling purposes, and said building is not completed, and said building was erected upon a portion of the aforesaid tract, said portion being described as follows: (For purposes of convenience, lots 126, 127 and 128 shall be referred to as tract "A" and lot 125, upon which the unfinished building is located, will be referred to as tract "B"):

30

BEGINNING on the westerly side of Essex Avenue, distant 325 feet northerly on a course of north 16 degrees 37 minutes East from the northerly side of Avon Terrace; thence North 16 degrees 37 minutes East along the westerly side of Essex Avenue 53 feet; thence North 73 degrees 23 minutes West 110 feet to a point and corner; thence South 73 degrees 23 minutes East 110 feet to the westerly side of Essex Avenue and point and place of BEGINNING.

40

Petition to Sell Real Estate Free and Clear of Liens.

4. Your petitioner caused an examination to be made of the title to said property, and an investigation to be made into the affairs of the said corporation, and finds that at the present time the said properties are encumbered as follows:

10 TRACT "A"—Lots 126, 127 and 128 are each covered by a first mortgage in the sum of \$3,432.00, originally given by Metropolis Holding Company to Robert Broadman and Fred C. Henn, each of which said mortgages was assigned to one Florence A. Sullivan by assignment dated September 16, 1929.

20 Said lots 126, 127 and 128 (TRACT "A") are also encumbered by a blanket mortgage in the sum of \$2,472.00, originally given to Upper Ridgewood Development Co., and assigned to one Benjamin Handelman and Andonia Alongi, said assignment being dated August 17, 1929 and recorded in Book 206 of Assignment of Mortgages, Essex County Register's Office, page 290.

30 TRACT "B"—which is lot 125, and upon which the unfinished building is located, is encumbered by a first mortgage held by Fidelity Union Title & Mortgage Guaranty Co., in the nominal sum of \$10,000.00, recorded in the Register's Office of Essex County in Book K 68 of Mortgages, page 331, and upon which mortgage there has been advanced approximately \$3,000.00, leaving a balance of \$7,000.00 to be advanced for the purpose of completion of said building.

40 The aforesaid Tract "B", lot 125, is also encumbered by a second mortgage held by Florence A. Sullivan, in the principal sum of \$3,432.00, the original mortgage having been assigned to Flor-

Petition to Sell Real Estate Free and Clear of Liens.

ence A. Sullivan, said assignment being recorded in the Register's Office of Essex County in Book C 66 of Assignment of Mortgages, pages 136, etc.

Said Tract "B", lot 125, is also subject to the blanket mortgage of \$2,472.00 covering lots 125, 126, 127 and 128, which said mortgage was originally given to the Upper Ridgewood Development Company and assigned as aforesaid. 10

Petitioner has been informed and believes that lot No. 125 may be released upon payment of one fourth of the amount of said blanket mortgage.

On August 30, 1929, Robert Broadman and Frederick C. Henn, prior to the assignment of the \$3,432.00 mortgage covering Tract "B", to Florence A. Sullivan, signed, executed and delivered a postponement of the lien of the mortgage of \$3,432.00 covering tract "B", Lot 125, in favor of a first mortgage given to the Fidelity Union Title & Mortgage Guaranty Co. in the principal sum of \$10,000.00, which said postponement was recorded on September 9, 1929 in the Essex County Register's Office in Book 109 of Release of Mortgages, page 353. 20

On November 22, 1929, Max Block filed a mechanic's lien against Tract "B" which said lien was recorded in the Essex County Clerk's Office in Book M. L. 27, page 353, the amount of said lien being \$160.00. 30

On January 23, 1930, William Clark, trading as Clark Roofing Co. filed a mechanic's lien against Tract "B" which said lien was recorded in the Essex County Clerk's Office in Book M. L. 27, page 551, the amount of said lien being \$695.00.

On February 10, 1930, Walter A. Pitt, filed a mechanic's lien against Tract "B" which said lien was recorded in the Essex County Clerk's Office in 40

Petition to Sell Real Estate Free and Clear of Liens.

Book M. L. 28, page 26, the amount of said lien being \$1130.00.

10 5. Petitioner further sets forth that on June 20, 1929, defendant corporation entered into a written contract with one, Sam Volpe, and which said contract was filed on June 21, 1929, in the Essex County Clerk's Office, said contract being known as No. 852, and according to the terms of said contract, Sam Volpe agreed to do and finish all mason, carpentry, plumbing, electrical, heating, painting and all other work, with the exception of excavating foundation, for the sum of \$15,200.00, said house to be erected on Lot No. 125 as aforesaid, and on June 21, 1929, the specifications, together with the written contract, were filed.

20 6. Petitioner alleges that by reason of the filing of the written general contract, for the erection and construction of the buildings as aforesaid, with the County Clerk, that the parties who filed lien claims are not legally entitled to prosecute their claims, and that said claims are and will be disputed.

30 7. Petitioner charges that Sam Volpe is the only person who could file a lien, and that the remedy of the various other sub-contractors and materialmen is to serve stop notices, not to file mechanic's liens.

8. Petitioner therefore charges that the aforesaid lien claims are disputed and that said liens are brought into question and dispute.

40 9. Petitioner alleges that the building is exposed to the elements, subject to loss by fire and theft, and it is necessary that immediate steps be taken for the completion of the said building, so

Petition to Sell Real Estate Free and Clear of Liens.

that the same may be offered for sale; and unless the completion of said unfinished building is ordered, all interested parties will suffer irreparable damage, and in the meantime, the property is deteriorating in value.

10. William Clark, claimed that his lien was prior to the mortgage of the Fidelity Union Title and Mortgage Guaranty Company, and said lien claimant is therefore disputing the priority of the Fidelity mortgage.

10

11. On or about February 20th, 1930, Ralph Baroni & Sons filed a lien claim and Jay F. Dailey, the attorney for complainant, has informed petitioner's attorney that he is about to make an application to amend his complaint, so that said claimant may allege priority over the Fidelity mortgage.

20

12. Walter A. Pitt, mechanic's lien claimant, claims priority over mortgages.

13. Florence A. Sullivan, present holder of the mortgage for \$3,432.00, filed a bill to foreclose, and in said foreclosure suit, mortgagee contends that the execution and delivery of a postponement to the Fidelity Union Title and Mortgage Guaranty Company was made without consideration, and that the lien of the said Florence A. Sullivan mortgage is prior to the lien of the Fidelity Union Title and Mortgage Guaranty Company. Petitioner has been informed and believes that answer has been filed and the matter is at issue but said issues have not as yet been determined nor tried.

30

14. Petitioner disputes the validity of the lien claims because of the fact that contract with a general contractor had been filed and petitioner

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Petition to Sell Real Estate Free and Clear of Liens.

contends that said lien claimants had no right to file lien claims but should have proceeded by service of stop notices.

10 15. By reason of the above allegations, the legality of the lien of the mortgages heretofore referred to, together with the legality of the mechanics' liens heretofore referred to, and the order of the priority of the aforesaid mortgages and liens are brought into question and dispute.

20 16. By reason of the dispute in connection with the lien claims, by reason of the dispute amongst lien claimants and mortgagees as to order of priority of liens, petitioner charges and alleges that the property will materially deteriorate in value pending litigation.

30 17. Petitioner repeats his allegation that the building is exposed to the elements, and petitioner fears that some of the equipment on the building may be stolen, and while litigation is going on between the mortgagees and the lien claimants, the value of said property is deteriorating and interested parties may suffer irreparable damage unless an immediate sale of the property is ordered free and clear of all lien claims.

40 18. Petitioner is therefore of the opinion that it will be for the best interests of the creditors, mortgagees, lien claimants, lienholders, stockholders and all parties in interest that the aforesaid property be sold as quickly as possible, free and clear of all mortgages, liens and encumbrances hereinabove referred to, the liens of said mortgagees and lienors, if any, to attach to the proceeds of sale and to abide the further order of this court, and that the moneys realized from the sale of said

Petition to Sell Real Estate Free and Clear of Liens.

property be paid into this court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court shall direct.

Your petitioner will ever pray, &c.

10

DAVID WEINICK,
Petitioner.

State of New Jersey, }
County of Essex, } ss.:

DAVID WEINICK, being duly sworn, on his oath deposes and says, that he is the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof and the same are true to the best of his knowledge and belief.

20

DAVID WEINICK.

Subscribed and sworn to before me }
this 28th day of March, 1930. }

CAROLINE PREUSS,
A Notary Public of New Jersey.

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Order to Show Cause.

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corporation,
Defendant.

76-344.

On Bill, &c.

20 David Weinick, the receiver herein, having this day filed his petition herein, from which it appears that the defendant corporation, at the time of the appointment of the receiver, was the owner of properties more particularly described in the petition, and after considering the contents of said petition, and sufficient reason appearing for the entry of this order, it is on this 1st day of April, 1930,

30 ORDERED: That all of the stockholders, mortgagees, lien claimant, lienholders, creditors and parties in interest specifically mentioned in the petition appear before this Honorable Court, at the Chancery Chambers, Industrial Office Building, 1060 Broad Street, Newark, New Jersey, on April 8th, 1930, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, and show cause why the prayer of the said petition filed herein should not be granted, or why the petitioner therein should not have such other and further relief as to the court may seem just and equitable in the

40 premises; and it is further

Order to Sell Free and Clear of Liens.

ORDERED: That a copy of this order, together with a copy of the aforementioned petition (which need not be certified except by the solicitor for the receiver) be served upon the mortgagees, or their solicitors within three days after the date hereof, and that a copy of this order (which may be certified by solicitor for the receiver) be served upon stockholders, lien claimants and creditors, by mailing a copy thereof to each of them or their respective solicitors, within three days after the date hereof. 10

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH, 20
V. C.

Order to Sell Free and Clear of Liens.

(Filed April 9, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

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76-344.
On Bill, &c.

This matter being opened to the court by David Bobker, solicitor for David Weinick, receiver of 40

Order to Sell Free and Clear of Liens.

the above named defendant corporation, on the 8th day of April, 1930, which was the return day of an order to show cause directed to stockholders, mortgagees, lien claimants, lienholders and creditors and other parties in interest more specifically mentioned in the receiver's petition for sale, which said petition for sale more particularly embodied and included Lot 125, on Map of Broadman & Henn, Section Three, Montrose Park, Glen Ridge and Bloomfield, N. J., and more particularly herein-after described, which said petition to sell was filed in this cause, said order to show cause directing parties to submit reasons why receiver should not sell said property free and clear of all liens and encumbrances; the property as aforesaid is described as follows:

Premises located in the Town of Bloomfield, County of Essex and State of New Jersey:

BEGINNING on the westerly side of Essex Avenue, distant 325 feet northerly on a course of North 16 degrees 37 minutes East from the northerly side of Avon Terrace; thence North 16 degrees 37 minutes East along the westerly side of Essex Avenue 53 feet; thence North 73 degrees 23 minutes West 100 feet to a point and corner; thence South 73 degrees 23 minutes East 100 feet to the westerly side of Essex Avenue and point and place of BEGINNING.

Being known as Lot No. 125 on map of property of Broadman & Henn, Section Three, Montrose Park, situated in Glen Ridge and Bloomfield, N. J. made by Ernest Baechlin, and filed in the Register's Office of Essex County.

And it appearing

(1) That the said order to show cause was served in accordance with the court's direction:

Order to Sell Free and Clear of Liens.

(2) That questions have arisen as to the legality and priority of mortgages and liens against the aforesaid premises:

(3) That the property, because of its incom-
pleted condition and location of same, will mate-
rially deteriorate in value pending litigation re-
ferred to in the receiver's petition, and the fact that
said property will deteriorate in value having been
referred to in the receiver's petition and in an affi-
davit filed herein by Louis E. Goldfarb; 10

(4) That argument in support of the application
to sell was submitted by David Bobker, solicitor
for receiver, and also by Jay F. Dailey, solicitor for
Ralph Barone & Sons, a lien claimant, and Morris
G. Warner, solicitor for Walter A. Pitt, a lien
claimant; that argument against sale free and
clear of liens was submitted by Henn & Burr, so-
licitors for Florence A. Sullivan, and also by the
solicitors for the Fidelity Union Title and Mort-
gage Guaranty Company, and also by the solicitor
for William Clark, trading as Clark Roofing Co.;
and no other parties in interest appearing: 20

(5) That the best interest of all parties con-
cerned will be served by the granting of the ap-
plication of the receiver herein that the property
should be sold free and clear of all liens: 30

It is, on this 9th day of April, 1930, on motion of
David Bobker, solicitor for the receiver,

ORDERED, that David Weinick, the receiver for
Pirozzi Construction Corporation, be and he is
hereby authorized, directed and permitted to sell,
at a public auction, the real estate heretofore more
particularly described, situate, lying and being in
the Town of Bloomfield, County of Essex and State 40

Order to Sell Free and Clear of Liens.

of New Jersey, free and clear of all mechanics' liens, rights of mechanics' liens, judgments, mortgages and all other liens and encumbrances. The property will be sold subject, however, to the following:

10

(A) All taxes, assessments and water rents:

(B) Such facts as an accurate survey and inspection of the property would disclose:

(C) Violations, if any, of the provisions of any statute, ordinance, resolution or rule pertaining to or adopted by any Federal, State, or Municipal Board or Body:

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(D) Easements and rights of way, if any:

(E) Facts, as an examination of any Chancery proceedings affecting said property may disclose.

The property to be sold has heretofore been described. And it is further

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ORDERED, that the prospective bidder or bidders shall be offered an opportunity to inspect, at reasonable hours, the property to be offered for sale, in accordance with this order, but the receiver, by permitting such inspection and examination, shall not be deemed to make any representation or warranty as to the title, validity or condition of the property of the defendant corporation, to be sold as aforesaid. It is further

ORDERED, that the receiver herein be and he is hereby authorized and directed to sell the aforesaid real estate at public sale, in accordance with the statute in such cases made and provided. And it is further

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ORDERED, that the notice of sale, which notice

Order Limiting Creditors.

shall set forth time and place fixed for hearing on confirmation of sale, be served upon the mortgagees, lienholders, lien claimants, creditors, stockholders and all parties in interest, by mailing a copy thereof, together with a copy of the aforesaid order, to each of them, or their respective solicitors or attorneys, within five days after the date hereof.

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E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

Order Limiting Creditors.

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(Filed May 6, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

76-344.
On Bill, &c.

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Upon opening this matter to the court by David Bobker, solicitor for the receiver in the above cause, it is, on this 6th day of May, 1930,

ORDERED, that the creditors of the said Pirozzi Construction Corporation do present to the receiver appointed in this cause, and prove before him, under oath or affirmation, or otherwise, as the

40

Order Limiting Creditors.

10 said receiver shall direct, to the satisfaction of the
 said receiver, their several claims and demands
 against the said corporation, within one month
 from the date of this order, or that they be ex-
 cluded from the benefit of such dividends as may
 thereafter be made and declared by this court
 upon the proceeds of the effects of said corpora-
 tion; and for the better ascertaining the creditors
 of said corporation, and what is due to them, re-
 spectively, the said creditors are to be examined
 as the said receiver shall direct or may deem nec-
 essary and expedient, and produce books and
 papers before him, on oath or affirmation (which
 20 oath or affirmation the said receiver is hereby au-
 thorized to administer), as well as to examine,
 under oath or affirmation, all such witnesses as
 shall be produced before him touching the de-
 mands of said creditors. And it is further

30 ORDERED, that the said receiver do cause proper
 advertisements to be published in the Newark
 Ledger, a newspaper published in the City of New-
 ark, in this state, for the creditors of said corpo-
 ration to come in before him and prove their
 claims and demands, as in this order is directed;
 and that such publication be made within five days
 from the date hereof, and be continued in such
 paper as aforesaid for the space of three weeks
 once in each week. And it is further

ORDERED, that within the same time said receiver
 also mail a notice of this order to the post office
 address of each of the said creditors, if the same
 can be ascertained, with postage prepaid thereon.

E. R. WALKER,
 C.

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Respectfully advised,

ALONZO CHURCH,
 V. C.

Receiver's Report of Sale.

(Filed June 4, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION, a New Jersey corporation,
Defendant.

10

On Bill, &c.

To his HONOR EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

20

In pursuance of an order made by the Chancellor in the above stated cause, and dated on the 6th day of May, 1930, by which it was, among other things, ordered, adjudged and decreed that the undersigned, receiver of the above named defendant company, should make sale of a parcel of real estate consisting of a plot of ground with an unfinished building thereon, belonging to the defendant, a true copy of the said order being attached hereto marked "A", I, David Weinick, receiver as aforesaid, do hereby report to his honor, the Chancellor, that I did, by public advertisements, set up at five or more public places in the County of Essex, a true copy of the affidavit of posting said notices being attached hereto and marked "B", the original affidavit having been filed with the clerk of the Court of Chancery at Trenton, and also published in the Newark Evening News and Newark Star Eagle, two newspapers printed and published in the County of Essex, in

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Receiver's Report of Sale.

which said real estate is situate, both of which newspapers are printed and published at the County seat of said County, at least four weeks successively, once a week next preceding the time appointed for said sale, giving public notice that

10 the aforesaid real estate would be exposed for sale at public vendue, on June 2nd, 1920, at the hour of one o'clock in the afternoon (Daylight saving time), at the Sheriff's Sales Room, fifth floor, Hall of Records Building, High Street, Newark, Essex County, New Jersey; and at the time and place so appointed and advertised, I did expose the property referred to in the attached order at public vendue to the highest bidder in

20 the matter referred to in the order to sell and in the manner referred to in the conditions of sale that were announced at the aforesaid time and place. There was competitive bidding at the time and place fixed for the sale, and the highest offer received was \$7,000.00, and I thereupon struck off and sold to Robert Broadman the aforesaid property, for the price, as aforesaid; I announced that application to confirm the sale would be submitted to the Chancellor at the Chancery Chambers, Industrial Office Building, Newark, New Jersey, on

30 Tuesday, June 3rd, 1930, at 10 A. M.

Prior to conducting the sale conditions of said sale were read and announced, and I attach hereto and make it a part of this report, a true copy of the conditions of sale, same having been signed by Henn & Burr, as attorneys for the purchaser.

Respectfully submitted,

D. A. WEINICK,
Receiver.

Amended Order to Sell Free and Clear of Liens.

State of New Jersey, }
 County of Essex, } ss.:

DAVID WEINICK, being duly sworn, according to law, on his oath deposes and says that he is the receiver named in the foregoing report of sale; that he has read the said report and knows the contents thereof and the same are true to the best of his knowledge, information and belief. 10

D. A. WEINICK.

Subscribed and sworn to before me }
 this 3rd day of June, 1930. }

CAROLINE PREUSS,
 A Notary Public of New Jersey.

20

**Amended Order to Sell Free and Clear of
 Liens.**

(Filed May 6, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
 a New Jersey corporation,
Defendant.

30

76-344.

On Bill, &c.

This matter being opened to the court by David Bobker, solicitor for David Weinick, receiver for the above named defendant corporation, and it 40

Amended Order to Sell Free and Clear of Liens.

appearing that on the 9th day of April, 1930, an order was entered directing a sale of certain real estate belonging to the defendant corporation, free and clear of liens; and

10 It further appearing to the court that said order to sell was based upon the allegations in a petition filed on the 1st day of April, 1930, upon which petition an order to show cause was entered on the 1st day of April, 1930; and

It appearing that as a result of inadvertence the description in the original petition to sell and in the order to sell dated April 9th, 1930, did not properly describe the property in that one course was omitted from the description; and

20 It further appearing that a public sale of said property, wrongly described, was set down for May 5th, 1930, and that said sale was adjourned until May 12th, 1930; and

It further appearing to the court that confirmation of the said sale was adjourned until May 13th, 1930, and sufficient reason appearing for the entry of this order, it is, on this 6th day of May, 1930,

30 ORDERED: that David Weinick, the receiver for Pirozzi Construction Corporation, be and he is hereby authorized, directed and permitted to sell, at a public auction, the real estate hereinafter more particularly described, situate, lying and being in the Town of Bloomfield, County of Essex and State of New Jersey, free and clear of all mechanics' liens, rights of mechanics' liens, judgments, mortgages and all other liens and encumbrances. The property to be sold is described as

40 follows:

Amended Order to Sell Free and Clear of Liens.

Premises located in the Town of Bloomfield,
County of Essex and State of New Jersey:

BEGINNING on the westerly side of Essex Avenue distant 325 feet northerly on a course of North 16 degrees 37 minutes east from the northerly side of Avon Terrace; thence North 16 degrees 37 minutes east along the westerly side of Essex Avenue 53 feet; thence North 73 degrees 23 minutes west 110 feet to a point and corner; thence South 16 degrees 37 minutes west 53 feet to a point and corner; thence south 73 degrees 23 minutes East 110 feet to the westerly side of Essex Avenue the point and place of BEGINNING. 10

Being known as lot No. 125 on map of property of Broadman & Henn, Section B, Montrose Park, situate in Glen Ridge and Bloomfield, made by Ernest Baechlin, dated September, 1924. 20

The property will be sold subject, however, to the following:

- (a) All taxes, assessments and water rents;
- (b) Such facts as an accurate survey and inspection of the property would disclose;
- (c) Violations, if any, of the provisions of any statute, ordinance, resolution or rule pertaining to or adopted by any Federal, State or Municipal Board or Body: 30
- (d) Easements and rights of way, if any;
- (e) Facts, as an examination of any Chancery proceedings affecting said property may disclose.

And it is further

ORDERED: that the amended description of the property to be sold, heretofore described be con- 40

Amended Order to Sell Free and Clear of Liens.

sidered as part of the original petition to sell filed herein on the 1st day of April, 1930, upon which the original order to show cause was issued and upon which the original order to sell was entered on the 9th day of April, 1930. And it is further

10

ORDERED: that the prospective bidder or bidders shall be offered an opportunity to inspect, at reasonable hours, the property to be offered for sale, in accordance with this order, but the receiver, by permitting such inspection and examination, shall not be deemed to make any representation or warranty as to the title, validity or condition of the property of the defendant corporation, to be sold as aforesaid. It is further

20

ORDERED: that the receiver herein be and he is hereby authorized and directed to sell the aforesaid real estate at public sale, in accordance with the statute in such cases made and provided. And it is further

30

ORDERED: that the notice of sale, which notice shall set forth time and place fixed for hearing on confirmation of sale, be served upon the mortgagees, lienholders, lien claimants, creditors, stockholders and all parties in interest, by mailing a copy thereof, together with a copy of the aforesaid order, to each of them, or their respective solicitors or attorneys, within three days from the date hereof.

E. R. WALKER,

C.

Respectfully advised,

ALONZO CHURCH,

V. C.

40

Affidavit of Posting Notice of Sale.

"B"

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

10

On Bill, &c.

State of New Jersey, }
County of Essex, } ss.:

20

SEYMOUR D. SHAPIRO, being duly sworn, on his oath, according to law, says:

On May 12th, 1930, I posted a printed notice of sale, copy of which is attached hereto and made a part hereof, at each of the following public places:

(1) Sheriff's Office, Hall of Records, Newark, N. J.

30

(2) County Clerk's Office, Hall of Records, Newark, N. J.

(3) Newark Postoffice.

(4) Bloomfield Postoffice.

(5) On the premises to be sold, Essex Ave., Bloomfield, N. J.

SEYMOUR D. SHAPIRO.

Subscribed and sworn to before me }
this 15th day of May, 1930. }

40

CAROLINE PREUSS,
Notary Public of New Jersey.

Conditions of Sale.

IN CHANCERY OF NEW JERSFY.

Between Burt Deveau, complainant, and Pirozzi Construction Corporation, a New Jersey corporation, defendant. On bill, &c. Notice of sale.

10 By virtue of an order of the Court of Chancery entered herein on the 6th day of May, 1930, the subscriber, receiver of Pirozzi Construction Corporation, will on Monday, the 2d day of June, 1930, at 1 o'clock in the afternoon (daylight saving time) at the Sheriff's sales room, fifth floor, Hall of Records Building, High street, Newark, N. J., sell at public vendue all that certain tract or parcel of land and premises, situate, lying, and being in the Town of Bloomfield, County of Essex and State of New Jersey:

20 Beginning on the westerly side of Essex avenue distant 325 feet northerly on a course of north 16 degrees 37 minutes east from the northerly side of Avon terrace; thence north 16 degrees 37 minutes east along the westerly side of Essex avenue 53 feet; thence north 73 degrees 23 minutes west 110 feet to a point and corner; thence south 16 degrees 37 minutes west 53 feet to a point and corner; thence south 73 degrees 23 minutes east 110 feet to the westerly side of Essex avenue, the point and place of beginning.

30 Being known as lot No. 125 on map of property of Broadman & Henn, section 3 Montrose Park, situate in Glen Ridge and Bloomfield, made by Ernest Baechlin, dated September, 1924.

40 Subject to municipal taxes, assessments and water rents and to such facts as an accurate survey, and inspection of the property may disclose; violations, if any, of the provisions of any statute, ordinance, resolution or rule pertaining to or

Conditions of Sale.

adopted by any federal, State or municipal board or body; easements and rights of way, if any, and such facts as an examination of any Chancery proceeding affecting said property may disclose, and free and clear of all mechanics' liens, rights of mechanics' liens, judgments, mortgages and all other liens and encumbrances. 10

For the purposes of inspecting the aforesaid property, apply to David Bobker, 972 Broad street, Newark, N. J.

The exact amount of liens and further conditions of sale will be announced at time of sale.

Take further notice that sale will be subject to confirmation by the Court of Chancery, which will be applied for on Tuesday, June 3, 1930, at 10 o'clock in the forenoon (daylight saving time) or as soon thereafter as counsel can be heard at the Chancery Chambers, 1060 Broad Street, Newark, N. J. 20

DAVID WEINICK, Receiver,
17 Academy Street, Newark, N. J.

DAVID BOBKER,
Solicitor of Receiver,
972 Broad Street, Newark, N. J.

30

40

Conditions of Sale.

IN CHANCERY OF NEW JERSEY.

10	Between BURT DEVEAU, <i>Complainant,</i> and PIROZZI CONSTRUCTION CORPORATION, a New Jersey corporation, <i>Defendant.</i>	} On Bill, &c. } Terms of Sale of } Real Estate.
----	---	--

1. The real estate to be sold is described as follows:

20 All that certain tract or parcel of land and premises, situate, lying and being in the Town of Bloomfield, County of Essex and State of New Jersey:

30 BEGINNING on the westerly side of Essex Avenue distant 325 feet northerly on a course of north 16 degrees 37 minutes east from the northerly side of Avon Terrace; thence north 16 degrees 37 minutes east along the westerly side of Essex Avenue 53 feet; thence north 73 degrees 23 minutes west 110 feet to a point and corner; thence south 16 degrees 37 minutes west 53 feet to a point and corner; thence south 73 degrees 23 minutes east 110 feet to the westerly side of Essex Avenue, the point and place of BEGINNING.

40 Being known as lot No. 125 on map of property of Broadman & Henn, Section 3, Montrose Park, situate in Glen Ridge and Bloomfield, made by Ernest Baechlin, dated September 1924.

Conditions of Sale.

2. The highest bidder shall be the purchaser when the property is struck off.

3. Twenty-five per cent. (25%) of the purchase price, by certified check or cash, shall be paid to the receiver at the time and place of the sale, such certified check to be upon a bank or trust company approved of by the receiver, to be made to his order. 10

4. The balance of the purchase price must be paid to David Weinick, receiver, at the office of his solicitor, David Bobker, 972 Broad Street, Newark, N. J., on the 15th of June, 1930, at 2 o'clock in the afternoon, when the deed to the said real estate will be ready for delivery and the title closed. 20

5. The receiver is not required to send any notice to the purchaser, and if the purchaser neglects to call at the time and place specified to receive his deed, he will be charged interest thereafter on the whole amount of the purchase, unless the receiver shall deem it proper to extend the time for the completion of the said purchase.

6. The deed will be delivered to the purchaser at the above time and place, upon compliance by the purchaser with these conditions. 30

7. The purchaser will be held bound by the purchase, whether he attends to receive the deed at the time and place aforesaid, and complies with the conditions of sale or not.

8. If the purchaser does not comply with the conditions of said sale, then said property will be again advertised and sold, or the purchaser will be held liable for his said bid, at the option of the 40

Conditions of Sale.

10 receiver; or the receiver, at his option, may apply to the Chancellor for an order compelling the purchaser to consummate the said bid. In case of a re-sale at a less price than the former bid, with interest and expenses, the former purchaser will be held liable for the deficiency, to which the money paid by the former purchaser, being the amount indicated herein, shall so far as the same may be sufficient, be retained and applied by the receiver; if such property should bring a larger sum, the said former purchaser will not be benefited thereby, and the receiver may retain the moneys paid by the former purchaser.

20 9. The receiver will convey title to the real estate to the purchaser by receiver's deed, subject only to:

(A) Subject to municipal taxes, assessments and water rents;

(B) Such facts as an accurate survey and inspection of the property may disclose;

30 (C) Violations, if any, of the provisions of any statute, ordinance, resolution or rule pertaining to or adopted by any Federal, State or Municipal board or body;

(D) Easements and rights of way, if any, and such facts as an examination of any Chancery proceeding affecting said property may disclose.

This sale is made subject to the approval of the Court of Chancery of New Jersey. The receiver reserves the right to reject any and all bids made. The receiver reserves the right to accept less than 25 per cent. deposit.

40

DAVID WEINICK, Receiver,
17 Academy Street, Newark, N. J.

Order Confirming Sale.

DAVID BOBKER,
Solicitor for Receiver,
972 Broad St., Newark, N. J.

The undersigned hereby acknowledges
to be the purchaser of the real estate sold this 2nd 10
day of June, 1930, at the price of \$7,000.00/100,
subject to the foregoing conditions of sale.

Dated June 2nd, 1930.

Name ROBERT BROADMAN
Address By HENN & BURR Solrs
of Jersey City

Order Confirming Sale. 20

(Filed June 3, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corporation,
Defendant.

76-344.

On Bill, &c.

30

This matter being opened to the court by David
Bobker, solicitor for the receiver of the above
named defendant company, and it appearing by
the report of said receiver that the property de-
scribed in Schedule "A" attached hereto and made
a part hereof, was sold for the sum of \$7,000.00 to
one Robert Broadman; 40

Order Confirming Sale.

10 And it further appearing to the court that copies
of the notice of sale, together with order to sell
were mailed to all known creditors and other parties
in interest, and that the sum referred to in the
report of sale is the highest and best price the same
would then bring in cash; and proof having been
filed of the mailing of the aforesaid order and notice
of sale, and this being the time and place fixed
for the hearing on application to confirm sale, and
after hearing David Bobker, solicitor for the receiver,
Morris G. Warner, solicitor for a lien claimant,
Frederick G. Henn, representing Henn & Burr,
solicitors for second mortgagee and the purchaser,
and Mr. Schaeffer appearing for the Fidelity
20 Union Title & Mortgage Guaranty Company,
mortgagee, and no reason appearing why said
sale should not be confirmed:

It is, on this 3rd day of June, 1930, on motion of
David Bobker, solicitor of the receiver, ORDERED,
that the sale referred to in the report of the receiver
be in all things confirmed, and the receiver is
authorized to make conveyance of the property therein
referred to, and sold by him, according to the
conditions of said sale. It is further

30 ORDERED, that the receiver, upon receiving the
sum of \$7,000.00, execute and deliver a receiver's
deed covering the aforesaid property, said conveyance
to run to Robert Broadman, or his assignee, the
conveyance to be made in accordance with order
to sell, notice of sale and conditions of sale.
It is further

40 ORDERED, that the consideration for the purchase
of the aforesaid property, to wit, \$7,000.00, shall be
retained and held by the receiver, subject to the
liens and priorities of mortgagees and lienors, the

Order Confirming Sale.

liens, if any, to attach to the proceeds of said sale; said moneys shall be held by the receiver subject to the same liens, priorities and equities of all parties in interest, as was the property before sale, to be disposed of as the court shall direct.

E. R. WALKER,
C.

10

Respectfully advised,

ALONZO CHURCH,
V. C.

SCHEDULE "A"

All that certain tract or parcel of land and premises, situate, lying and being in the Town of Bloomfield, County of Essex and State of New Jersey:

20

BEGINNING on the westerly side of Essex Avenue distant 325 feet northerly on a course of North 16 degrees 37 minutes east from the northerly side of Avon Terrace; thence north 16 degrees 37 minutes east along the westerly side of Essex Avenue 53 feet; thence north 73 degrees 23 minutes west 110 feet to a point and corner; thence south 16 degrees 37 minutes west 53 feet to a point and corner; thence south 73 degrees 23 minutes east 110 feet to the westerly side of Essex Avenue, the point and place of BEGINNING.

30

Being known as lot No. 125 on map of property of Broadman & Henn, Section 3, Montrose Park, situate in Glen Ridge and Bloomfield, made by Ernest Baechlin, dated September 1924.

40

Order Barring Creditors.

(Filed June 16, 1930.)

IN CHANCERY OF NEW JERSEY.

10

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

76/344.

On Bill, &c.

20

It appearing by an order of this court, made the 6th day of May, 1930, that the creditors of the Pirozzi Construction Corporation were ordered and directed to present to the receiver heretofore appointed in this cause, and to prove before him under oath or affirmation, or otherwise, their several claims and demands against the said defendant corporation, within one month from the date of said order, or be excluded from the benefit of such dividend as may hereafter be made and declared by this court from the proceeds of the property and effects of said defendant corporation, and that the said receiver should cause proper advertisements to be published in the Newark Ledger, a newspaper published in the City of Newark, in the State of New Jersey, directing said creditors to come in and prove before him their several claims and demands, and that the said receiver should also mail a notice of said order to the post office address of each of said creditors of said company, as will more fully appear by reference to said order; and it further appearing that the time

30

40

Order Barring Creditors.

limited in and by said order for said creditors of said defendant corporation to present their said claims to said receiver has expired, and that the said notice has been published and mailed to each of the creditors of said defendant company, as directed in and by said first-mentioned order:

10

It is, thereupon, on this 16th day of June, 1930,

ORDERED: that all creditors of said defendant company who have not brought in their claims to the said receiver be and they hereby are barred and excluded from the benefit of any dividend that may hereafter be made and declared by this court from the proceeds of sale of the property and effects of the said Pirozzi Construction Corporation.

20

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

30

40

Petition for Relief.

(Filed June 26, 1930.)

IN CHANCERY OF NEW JERSEY.

10

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corporation,
Defendant.

76-344.

On Bill, &c.

20

To Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.The petition of the undersigned respectfully
shows and alleges:

30

1. He is the receiver herein.

2. Pursuant with the Court's order herein, peti-
tioner offered at public sale certain property be-
longing to the defendant, located in Bloomfield,
New Jersey.3. Petitioner attaches hereto a true copy of the
terms of the above sale.4. Purchaser was Robert Broadman, who was
represented by Henn & Burr, solicitors.5. There was paid to petitioner, by Henn &
Burr, Five Hundred (\$500) Dollars on account of
the purchase price, leaving a balance due of Six
Thousand Five Hundred (\$6,500) Dollars.

40

6. The time to pass title was set down for Mon-

Petition for Relief.

day, June 16, 1930, at 2 P. M., at the office of David Bobker.

7. On June 16, 1930, and thereafter, petitioner was ready, able and willing to consummate the sale, but the purchaser failed and refused to attend for the purposes of closing the matter. 10

8. Petitioner further sets forth that he has made numerous efforts to induce purchaser to consummate sale, and sent written notices to the effect that unless the matter was closed by the week ending June 21, 1930, that application for relief would be submitted to the Court herein.

9. Petitioner believes that the purchaser should be compelled to consummate the bid. 20

Petitioner prays for such other and further relief as may seem equitable in the premises.

DAVID WEINICK,
Petitioner.

State of New Jersey, }
County of Essex, } ss.:

DAVID WEINICK, being duly sworn, on his oath, according to law, deposes and says: 30

That he is the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof; that same are true to the best of his knowledge, information and belief.

DAVID WEINICK.

Sworn and subscribed to before me }
this 23rd day of June, 1930. }

JAMES L. MCKENNA, 40
A Master in Chancery of New Jersey.

Order to Show Cause.

(Filed June 26, 1930.)

IN CHANCERY OF NEW JERSEY.

10

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corporation,
Defendant.

76/344.

On Bill, &c.

20

This matter being opened to the Court by David Bobker, solicitor for David Weinick, receiver herein, and after considering the allegations of the receiver's petition, reciting the fact that real estate was sold to Robert Broadman, and that the said Robert Broadman has failed and refused to consummate his bid, and sufficient reason appearing for the entry of this order, it is, on this 26th day of June, 1930,

30

ORDERED: that Robert Broadman be and he is hereby directed to show cause before the Chancellor, at the Chancery Chambers, Industrial Office Building, 1060 Broad Street, Newark, New Jersey, on the 1st day of July, 1930, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be entered compelling the said Robert Broadman to consummate his bid by accepting a deed and paying the balance due on the purchase price. It is further

40

ORDERED: that a copy of this order and of the petition upon which the same is based, which may

Order Directing Consummation of Bid.

be certified to be a true copy by the receiver or his solicitor, be served upon Robert Broadman or his attorneys, Henn & Burr, within two days from the date hereof.

E. R. WALKER,
C. 10

Respectfully advised,

ALONZO CHURCH,
V. C.

Order Directing Consummation of Bid.

(Filed July 1, 1930.)

IN CHANCERY OF NEW JERSEY. 20

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION, a New Jersey corporation,
Defendant.

76-344.
On Bill, &c.

30

This matter being opened to the court by David Bobker, solicitor for the receiver herein, and it appearing that an order was entered on June 26th, 1930, directing Robert Broadman to show cause on July 1st, 1930, why an order should not be entered compelling him to consummate his bid by accepting a deed and paying balance due on purchase price of real estate that was sold by the receiver and bought by the said Robert Broadman, and affi-

40

Order Directing Consummation of Bid.

10 davit of proof of service having been filed, and the said Robert Broadman failing to appear, and upon considering the allegations in the receiver's petition, and sufficient reason appearing for the entry of this order, it is, on this 1st day of July, 1930,

ORDERED: that Robert Broadman be and he is hereby directed to consummate his bid by paying balance due on purchase price. It is further

20 ORDERED, that said Robert Broadman be and he is hereby directed to make the aforesaid payment at the office of David Bobker, 972 Broad Street, Newark, N. J., on the 8th day of July, 1930, at two o'clock in the afternoon, at which time and place the receiver is to deliver to the said Robert Broadman a deed, pursuant with the conditions of sale. It is further

ORDERED, that service of a copy of this order, which may be designated as a true copy by solicitor for the receiver, upon Robert Broadman, or his solicitors, within three days from the date hereof shall be deemed good and sufficient service.

30

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

40

Petition for Relief.

(Filed July 15, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

10

76-344.

On Bill, &c.

To his Honor EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

20

The petition of the undersigned respectfully shows:

1. He is the receiver herein.

2. On the 1st day of July, 1930, an order was entered directing Robert Broadman to consummate sale of real estate to him, the purchase price being \$7,000.00, \$500.00 being paid as a deposit by the said Robert Broadman. The time and place fixed for consummation was Tuesday, July 8th, 1930, at 2 P. M., at the office of David Bobker, 972 Broad Street, Newark, N. J.

30

3. Pursuant with the terms of the order directing consummation of bid, petitioner caused to be served upon Robert Broadman, personally, a true copy of said order, a copy of the affidavit of service being attached hereto and made a part hereof, the original of which is in the possession of your petitioner's attorney and will be produced at the

40

Petition for Relief.

time and place fixed for the hearing in connection with this matter.

10 4. Petitioner alleges that the property is deteriorating in value, taxes are accruing, the interest thereon is accruing, the first mortgagee and lien claimants are pressing for payment, and unless the relief hereinafter prayed for is granted, creditors and stockholders may suffer irreparable damage and injury.

20 5. Your petitioner attended at the office of David Bobker and was ready, able and willing to tender deed for the property purchased by the said Robert Broadman, and both petitioner and his attorney waited from 2 P. M. until 6 P. M. The said Robert Broadman failed to appear, his attorneys, Henn & Burr, failed to appear, neither Broadman nor Henn & Burr communicated with your petitioner or with his attorney, and the said Robert Broadman has disregarded the court's order to consummate and apparently refuses to do so.

30 6. Petitioner prays that an order be entered adjudging the said Robert Broadman in contempt of court, or, in the alternative, that it be decreed that the deposit paid by Robert Broadman be forfeited and the property be resold, and that the said Robert Broadman be charged with deficiency resulting from a resale, together with costs of resale and together with counsel fees for the submitting and making of this application.

Your petitioner will ever pray, &c.

DAVID WEINICK,
Petitioner.

Copy of Affidavit.

State of New Jersey, }
 County of Essex, } ss.:

DAVID WEINICK, being duly sworn, on his oath deposes and says, that he is the petitioner named in the foregoing petition; that he has read the said petition and knows the contents thereof and the same are true to the best of his knowledge and belief. 10

DAVID WEINICK,

Subscribed and sworn to before me }
 this 9th day of July, 1930. }

MORRIS G. WARNER,
 Atty. at Law of N. J.

20

Affidavit.

(COPY)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
 a New Jersey corporation,
Defendant.

On Bill, &c.

30

State of New Jersey, }
 County of Essex, } ss.:

HELEN A. SCHNOLL, being duly sworn, on her oath, according to law, deposes and says:

40

Order to Show Cause.

That on July 2nd, 1930, I did serve a true copy of the order directing consummation of bid, entered herein on July 1, 1930, upon Robert Broadman, by handing the same to him personally.

10

HELEN A. SCHNOLL.

Sworn and subscribed to before me }
this 7th day of July, 1930. }

CAROLINE PREUSS,
A Notary Public of New Jersey.

Order to Show Cause.

(Filed July 15, 1930.)

20

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

30

76-344.
On Bill, &c.

40

Upon reading and filing the receiver's petition, from which it appears that Robert Broadman failed to consummate bid for real estate, and that the said Robert Broadman has been served personally with an order directing consummation, and sufficient reason appearing for the entry of this order, it is, on this 15th day of July, 1930,

Order to Show Cause.

ORDERED: that Robert Broadman be and he is hereby directed to show cause before the Chancellor, at the Chancery Chambers, 1060 Broad Street, Newark, New Jersey, on the 22nd day of July, 1930, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the said Robert Broadman should not be adjudged in contempt of court for failure to comply with the order entered herein on July 1, 1930, directing consummation of the bid for Seven Thousand (\$7000) Dollars for the real estate purchased by the said Robert Broadman, and why the receiver should not receive such other and further relief as may seem equitable and just in the premises. It is further

10

ORDERED: that a copy of this order, together with a copy of the petition upon which it is based, be served upon the said Robert Broadman or his attorneys, within 3 days from the date hereof.

20

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

30

40

Contempt Order.

(Filed July 29, 1930.)

IN CHANCERY OF NEW JERSEY.

10	Between BURT DEVEAU, <i>Complainant,</i> and PIROZZI CONSTRUCTION CORPORATION, a New Jersey corporation, <i>Defendant.</i>	} 76-344. On Bill, &c.
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20 This matter being opened to the Court by David Bobker, solicitor for receiver, and it appearing that by an order made in this cause on the 15th day of July, 1930, Robert Broadman was directed to show cause on the 22nd day of July, 1930, why he should not be adjudged guilty of contempt of this Court in the premises; and it further appearing that a copy of said order was duly served on the respondent as therein directed; and it further appearing that an order was entered on July 22,

30 1930, continuing the matter until July 29, 1930; and it now appearing that the said Robert Broadman is guilty of the contempt charged:

It is, on this 29th day of July, 1930

40 ORDERED AND ADJUDGED: that the said Robert Broadman is guilty of contempt of this court in refusing and neglecting to consummate his bid of Seven Thousand (\$7,000) Dollars for real estate belonging to the defendant, and sold to the said Robert Broadman by the receiver of the defendant; and it is further

Notice.

ORDERED: that the said Robert Broadman be committed to the common jail of the County of Hudson or to such other jail in this state where he may be apprehended and there to remain charged upon his said contempt, until he shall have paid the entire purchase price for the property purchased by him, together with the costs of these proceedings to be taxed, together with a counsel fee to David Bobker, in the sum of \$ _____, unless the Chancellor shall see fit sooner to discharge him and that a warrant issue for this purpose accordingly.

10

E. R. WALKER,
C.

Respectfully advised,

20

ALONZO CHURCH,
V. C.

Notice.

(Filed September 16, 1930.)

IN CHANCERY OF NEW JERSEY.

Between BURT DEVEAU, <i>Complainant,</i> and PIROZZI CONSTRUCTION CORPORATION, a New Jersey corporation, <i>Defendant.</i>	}	76/344. On Bill, &c.	30
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TAKE NOTICE that the final account of David Weinick, receiver of Pirozzi Construction Corpo-

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Order to Show Cause.

ration, has been filed in the Court of Chancery of New Jersey, and that the receiver will ask as his allowance \$1,250.00; solicitor for receiver will ask for an allowance of \$1,250.00; and taxed costs of suit; solicitor for complainant will ask for an allowance of \$150.00 and taxed costs of suit.

DAVID WEINICK,
Receiver.

DAVID BOBKER,
Solicitor for Receiver,
972 Broad Street,
Newark, N. J.

20 **Order to Show Cause Why Receiver's Account
Should Not Be Allowed and Receiver
Discharged.**

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

76/344.

On Bill, &c.

30

40

David Weinick, receiver of the above-named defendant company, heretofore appointed by this court, having presented and filed his final report as such receiver, together with an audit of his accounts from the date of his appointment, January

Order to Show Cause.

21, 1930 to September 4, 1930, covering the entire period of said receivership; and it appearing that the receipts of said receiver amount to \$7,000.00, and that his disbursements amount to \$176.49, leaving a cash balance in his hands amounting to \$6,823.51, and that said receiver is desirous of having his account passed upon and allowed, and of having his fees and allowances as receiver and the fees and costs of his counsel, fixed and determined and of being discharged as such receiver; and it appearing that the fund now in the hands of the receiver is claimed by mortgagees and mechanic's lien creditors:

10

It is, on this 16th day of September, 1930, on motion of David Bobker, of counsel with said receiver,

20

ORDERED: that the creditors of said defendant company who have filed claims with said receiver, do show cause before the Chancellor at the Chancery Chambers, in the Industrial Office Building, 1060 Broad Street, Newark, New Jersey, on Tuesday, the 30th day of September, 1930, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard thereon, why the report of said receiver should not be approved and the account of said receiver allowed, and why an order should not be made fixing and determining the fees and allowances of said receiver in the administration of his trust, and fixing and determining the fees, costs and allowances of his counsel, and directing the deposit of the balance of the funds in the hands of said receiver with the Clerk of the Court of Chancery, to abide the outcome of the proceedings now pending, to determine the validity and priority of the respective mortgages

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40

Order to Show Cause.

and mechanic's lien claims, said fund to be ultimately distributed by the Clerk of the Court of Chancery, pursuant with an order of this Court. It is further

10 ORDERED: that within five days from the date hereof, a copy of this order, together with a statement of the amounts receiver and counsel will ask for (which copy may be uncertified) be mailed to each of the mortgagees and mechanic's lien claim creditors, or their attorneys, at their respective post-office addresses, if the same can be ascertained, with the postage prepaid thereon. And it is further

20 ORDERED: that a copy of said receiver's report and account be deposited with the Sergeant-at-arms at the Chancery Chambers, No. 1060 Broad Street, in the City of Newark, there to remain open to reasonable inspection and examination by any person having any interest therein, until the return of this order. And it is further

30 ORDERED: that said account be referred to Joseph G. Wolber to audit same and report to this court on or before September 30, 1930.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

Final Account of Receiver.

(Filed September 16, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

10

On Bill, etc.

I, DAVID WEINICK, the receiver heretofore appointed for the defendant company in the above-stated cause, do respectfully report to the Chancellor that the following is a just and true account of all moneys that have come to my hands as receiver as aforesaid, and also of the moneys that have been disbursed by me as such receiver, and also an account of the claims against said company which have been presented to me.

20

I do further allege that the balance on hand, to wit, \$6,823.51, is claimed by mortgagees and mechanic lien creditors; that proceedings to determine the validity and priority of the respective mortgages and mechanic lien claims are now pending, that it will take some time before the matters involved are ultimately adjudicated, and in the meantime, petitioner is desirous of having the estate closed, and the moneys paid into court to abide the outcome of the aforesaid proceedings.

30

I do further allege that the unsecured creditors, whose claims are referred to in the attached

40

Final Account of Receiver.

schedule, have no right, title or interest in and to the aforesaid fund.

Dated September 4th, 1930.

Respectfully submitted,

10

DAVID WEINICK,
Receiver.

State of New Jersey, }
County of Essex, } ss.:

20 DAVID WEINICK, receiver of Pirozzi Construction Corporation, being duly sworn, according to law, on his oath deposes and says, that the within report and account contains a just and true statement and account of the moneys received by him as such receiver, or by any person or persons by his order, for the account of said receivership, and that the several sums mentioned therein as having been paid or allowed by him, were actually and truly so paid or allowed for the several purposes respectively therein mentioned, and that the said report and account is in all things just and true, both as to the charge and discharge thereof, and in all other respects, to the best of his knowledge,
30 information and belief.

DAVID WEINICK.

Subscribed and sworn to before me }
this 4th day of September, 1930. }

CAROLINE PREUSS,
A Notary Public for New Jersey.

40

Final Account of Receiver.

RECEIPTS

1930			
June 2	—Check for deposit on bid— o/c purchase price	\$500.00	
Aug. 8	—Check for balance of purchase price	6,500.00	
	TOTAL	<u>\$7,000.00</u>	10

DISBURSEMENTS

1930			
June 12	—Check to U. S. Fidelity & Guaranty Co., premium on bond	\$10.00	
June 21	—Check to Richard Stockton—ap- proving bond	6.00	
June 23	—Check to Morris G. Warner, attor- ney for B. Detterri—for watchman services (settlement)	50.00	20
Sept. 2	—Check to Newark Star Eagle—for advertising	28.56	
Sept. 2	—Check to Newark Evening News— for advertising	28.44	
Sept. 2	—Check to Newark Ledger—for ad- vertising	9.28	
Sept. 3	—Check to Passaic Bergen Lumber Company for doors supplied to George Moore, former receiver ..	44.21	30
	TOTAL	<u>176.49</u>	
	BALANCE ON HAND	<u>\$6,823.51</u>	

Final Account of Receiver.

LIST OF CLAIMS FILED

All claims filed are based on either mortgages or mechanic's lien items:

10	Lawson & MacMurray, Inc.	Levy, Fenster & McCloskey, Attys. 45 Branford Place Newark, N. J.	\$990.99
	William Clark	Joseph G. Lyons, Atty. 790 Broad Street Newark, N. J.	781.13
	Frank Passaro For Labor Performed	Newark, N. J.	223.43
	Burt Deveau For Labor Performed	Morris G. Warner, Atty. 17 Academy Street Newark, N. J.	475.00
20	Florence A. Sullivan	Henn & Burr, Attys. 665 Newark Avenue Jersey City, N. J.	15,080.20
	John Tricoli For Labor Performed	40 Sherman St. Montclair, N. J.	100.00

UNSECURED CLAIMS

30	Benjamin Hochman	Morris G. Warner, Atty. 17 Academy Street Newark, N. J.	135.00
	Walter A. Pitt	Morris G. Warner, Atty. 17 Academy Street Newark, N. J.	1,130.00

Master's Report of Final Account of Receiver.

(Filed October 8, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORA-
TION, a New Jersey corporation,
Defendant.

10

76-344.

On Bill, etc.

In pursuance of an order of this court, bearing date the sixteenth day of September, 1930, made in the above entitled cause, by which it was ordered that the Final Account of the Receiver of the above named defendant company, heretofore appointed by this court, filed September 18, 1930, be referred to me, Joseph G. Wolber, one of the Special Masters of this court, to audit, I do respectfully report that I have audited the said Final Account of the Receiver, and find that there has been received by said Receiver from June 2, 1930, to August 8, 1930, the sum of Seven Thousand Dollars (\$7,000.00), as appears by the Schedule of Receipts attached to said Final Account of Receiver;

20

30

And I find that the said Receiver has laid out and expended for various matters relating to or concerning his business and duties as such Receiver from June 12, 1930, to September 3, 1930, the sum of One Hundred Seventy-six Dollars and Forty-nine Cents (\$176.49), as appears by the Schedule of Disbursements attached to said Final

40

Exception to Receiver's Account.

10 Account of Receiver; which sum, being deducted from the aforesaid receipts, leaves a balance of Six Thousand Eight Hundred Twenty-three Dollars and Fifty-one Cents (\$6,823.51), which amount is on deposit to the credit of said Receiver with the Federal Trust Company, Newark, New Jersey.

There were also produced before me the records and vouchers of said Receiver showing the items of receipts and disbursements made by him as set forth in said Final Account of Receiver filed September 18, 1930, and it satisfactorily appears that the several receipts and payments are correct in the sums and dates.

20 JOSEPH G. WOLBER,
Special Master in Chancery of
New Jersey.

Exception to Receiver's Account.

(Filed October 7, 1930.)

IN CHANCERY OF NEW JERSEY.

30 Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION,
a New Jersey corporation,
Defendant.

} On Bill, &c.

40 To DAVID WEINICK, Esquire,
Receiver of Pirozzi Construction Corporation:
Florence A. Sullivan, one of the creditors and

Exception to Receiver's Account.

holder of a mortgage lien in the above entitled cause, does hereby except to the items as contained in the final report filed by David Weinick, Receiver appointed in this cause, as follows:

1. Said report does not set forth the entire liens or mortgages upon said premises nor does said report fix the priority of said liens or mortgages. 10
2. The items of September 2nd to the Newark Star Eagle and Newark News are improper in amounts.
3. Item dated June 23rd, check to Morris G. Warner, attorney for B. Deterri, for watchman services is an improper item for which this receiver prays allowance. 20
4. Item under date of September 3rd, payment to the Passaic Lumber Company for doors supplied to George Moore, former receiver, is improper and should not be allowed, for which the receiver prays allowance.
5. The receiver has not attached to nor are there any vouchers on file showing the payments made by the receiver.
6. The allowance asked for by the receiver is unreasonable and unconscionable. Said receiver has not filed any affidavit or made any proof as to the services rendered in his administration as receiver of the said Pirozzi Construction Corporation. 30

HENN & BURR,
Solicitors for Florence A. Sullivan.

12 OCT. T. 1931

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

New Jersey Court of Errors and Appeals

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION COR-
PORATION, a New Jersey
Corporation,
Defendant.

FLORENCE A. SULLIVAN,
Appellant,

vs.

DAVID WEINICK, Receiver of
Pirozzi Construction Cor-
poration, a New Jersey
Corporation,
Appellee-Respondent.

*On Appeal
from the
Court of
Chancery.*

BRIEF FOR APPELLEE-RESPONDENT, DAVID WEINICK, RECEIVER OF PIROZZI CONSTRUCTION CORPORATION, a New Jersey Corporation.

Preliminary Statement.

This case is before this Court on an appeal from the decree of the Court of Chancery, Walker, C., Church, V.-C., dismissing the exceptions to the final report of the receiver of the defendant corporation, Pirozzi Construction Corporation, approving the receiver's account and fixing the allowances to the receiver and his counsel.

New Jersey State Library

Statement of Facts.

On November 29, 1929, complainant, Burt Deveau, a creditor of defendant, Pirozzi Construction Corporation, filed a bill in the Court of Chancery to have the Pirozzi Construction Corporation, a New Jersey corporation, declared insolvent, and upon the filing of said bill of complaint, an order to show cause why the prayer of said bill should not be granted was signed by Vice-Chancellor Church, returnable December 3, 1929. On the return of the said order to show cause, one George D. Moore, Jr. was appointed temporary receiver, the said order of appointment also providing that the creditors and stockholders of the defendant corporation show cause on December 10, 1929, why the said receiver should not be continued or why some other person should not be appointed in his place or with him as co-receiver. The said return date of the last mentioned order was continued to December 27, 1929, at which time the said receiver was continued (p. 32).

On January 21, 1930, the receiver, George D. Moore, Jr., heretofore appointed, was summarily discharged by Vice-Chancellor Church and one David Weinick, an attorney at law of this State, was appointed in his place and stead (p. 33). The said substituted receiver qualified and had an appraisal of the property made (p. 35) which showed that the building, when completed at a further cost of \$4,000.00, would be worth, at a quick sale, \$15,000.00 (p. 36).

On April 1, 1930, the substituted receiver filed a petition praying for the appointment of counsel (p. 48) and David Bobker, the solicitor of the former receiver, was appointed solicitor of the receiver (p. 50).

On April 1, 1930, the substituted receiver filed a petition to sell part of the real estate free and clear of liens (p. 51), in which he recites the secured creditors, whose claims total \$8,417.00, and obtained an order to show cause returnable April 8, 1930 (p. 60) why the prayer of the petition should not be granted. On the return date of the order to show cause, the said application was opposed by the appellant and the Fidelity Union Title and Mortgage Guaranty Co., another mortgagee, representing \$6,432.00 worth of secured claims, and on April 9, 1930 (p. 61), an order was made ordering a sale, free and clear of all liens.

On May 6, 1930, an amended order to sell free and clear of all liens was entered (p. 69), the purpose of the same being to correct an error in the description of the former orders.

On June 4, 1930, the receiver filed his report of sale (p. 67) reporting that the said property had been sold to the highest bidder, one Robert Broadman, for \$7,000.00

On June 3, 1930, in accordance with the conditions of said sale, application was made to Vice-Chancellor Church to confirm the said sale, and on that date an order was entered (p. 79) confirming the said sale and further ordering that the said \$7,000.00 be retained and held by the receiver, subject to the liens and priorities of mortgagees and lienors, the liens, if any, to attach to the proceeds of sale.

On May 6, 1930, an order limiting creditors (p. 65) was entered and on June 16, 1930, an order barring creditors (p. 82) was entered.

On June 23, 1930, a petition for relief (p. 84) was filed by the receiver, and on July 1, 1930, an

order directing Robert Broadman (p. 87) to consummate his bid and pay the balance of purchase price was entered.

On July 15, 1930, another petition for relief (p. 89) was filed by the receiver and an order to show cause (p. 92), returnable July 22, 1930, why the said Robert Broadman should not be adjudged in contempt of court for failure to comply with order directing him to consummate his bid, was entered.

On July 29, 1930 (p. 94), said Robert Broadman was adjudged in contempt of court.

On September 16, 1930, final account of the receiver (p. 99) was filed and an order to show cause (p. 96), returnable September 30, 1930, why the receiver's account should not be allowed and the receiver discharged, was granted and an order to show cause, together with a notice (p. 95), signed by the receiver and his counsel, was served on the appellant.

On October 7, 1930, appellant filed exceptions to the receiver's account (p. 104), and on October 7, 1930, the Chancellor, by Church, *V.-C.*, signed an order (p. 8) approving the receiver's account, made allowances to the receiver and his counsel, discharged the receiver and permitted him to pay the balance of the moneys to the Clerk in Chancery to abide the outcome of the foreclosure action instituted by the appellant.

Answers to Questions of Law Raised.

1. The receiver's account was properly allowed and the receiver was legally discharged.
2. The substituted receiver was entitled to retain counsel.

3. The allowances to the receiver and his counsel were not excessive or unconscionable.

4. The receivership was not a naked or dry receivership, but one entirely for the benefit of all the creditors.

ARGUMENT AND LAW.

POINT I.

(a) It appears as a matter of record in the Court of Chancery that the receiver's final report accounted for the administration of the estate. As a receiver he was unable to determine the priorities of the encumbrances because at the time of his appointment, and subsequent thereto, by an order of reference in the Court of Chancery, the Chancellor, by Bigelow, *V.-C.*, was taking testimony to determine the priorities of the liens in question. The determination of the priorities extended over a period of seven months and because of the involved, detailed and arduous task of taking testimony, creditors were hostile, records of the insolvent corporation were nil, and the validity of the appellant's mortgage was seriously questioned. During this extensive period of time the property in question was not completed, was open to the elements, and subject to serious depreciation in value if a sale of the property was not had immediately. The property was sold free and clear of encumbrances under order dated April 9, 1930 (p. 61). Because of the dispute as to the priorities of the various liens, and because the property was exposed to the elements and subject to depreciation in value, all the assets were converted into cash for the best interest of the estate, as is admitted in the appellant's brief.

(b) The items of September 2, 1930, in the account of the receiver (p. 101) to the Newark Star Eagle and Newark Evening News, were proper items as they were necessary administration expenses. Although an error was made in the description of the properties in advertising the same, and although it was necessary to secure an amended order and to re-advertise the properties over again, the estate is only charged as if the order to sell free and clear of liens were not re-advertised. The estate is only being charged for one item of advertising instead of two advertisements which the appellant seems to imply.

(c) The item of September 3, 1930 in said account (p. 101) to the Passaic-Bergen Lumber Co. for doors supplied to George D. Moore, Jr., the former receiver, is a proper one and should be allowed. The case of *Lehigh Coal & Nav. Co. v. Central Railroad*, 41 N. J. Eq. 167, cited by the appellant is not a case in point. The doors supplied to the original receiver, George D. Moore, Jr., were for the purpose of enclosing the premises in question and were both necessary and for the benefit of the estate. Section 66 of the Corporation Act provides as follows:

“That a receiver, at his discretion, shall have the power to compound and settle with any debtor or creditor of the corporation, upon such terms and in such manner as he or they shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person, to allow just set-offs in favor of such persons, in all cases in which the same ought to be allowed according to law and equity.”

In the present case the receiver felt that inasmuch as this item was incurred for the benefit of the estate it was just and conscionable to allow this claim.

(d) The receiver did submit an itemized statement of the moneys received and accumulated interest and disbursements, together with the vouchers showing payments made, to be audited by a Special Master of the Court of Chancery, and the Master's report of the final account of the receiver (p. 103) was filed October 8, 1930 by Joseph G. Wolber, a Special Master in Chancery of New Jersey. The receiver did conform with 252 of the Rules of the Court of Chancery which provide that

“inventories and accounts of guardians and receivers may, from time to time, in the discretion of the court, be referred to one of the special masters of the court, who shall report thereon with all convenient speed, whether such accounts appear to have been correctly kept, and whether the funds are safely invested or secured; and the said master may summon such guardian or receiver to appear before him and examine him under oath touching his account or inventory; and he may summon and examine other witnesses touching the matters submitted to him, if he shall see proper to do so.”

It is, therefore, respectfully submitted that the exceptions to the receiver's account were rightfully denied and the account rightfully allowed.

POINT II.

The substituted receiver, though being an attorney at law of New Jersey, was entitled to retain counsel.

Chancellor Walker in the case of *Conover v. West Jersey Mortgage Co.*, 96 N. J. Eq. 441 at p. 446, laid down the following rule:

“Although a receiver be a member of the bar, his duties as receiver being strictly executive or administrative, he is not obliged

to perform legal services on behalf of the estate. He may employ counsel to advise and assist him in matters of law.”

This is still the law today and is reiterated in the case of *Shachat v. Standard Auto Supply Co.*, 106 N. J. Eq. 105.

In the present instance, the substituted receiver was appointed after the former receiver, George D. Moore, Jr., had summarily been removed in the midst of the proceedings then pending. The substituted receiver retained counsel by order of the Court of Chancery through Vice-Chancellor Church.

The substituted receiver stepped into the midst of these proceedings without any knowledge of what had transpired previous to his appointment and was unable to communicate or elicit any information from the original receiver. Inasmuch as the solicitor for the original receiver was familiar with all the proceedings and facts in the case, he deemed it advisable and most judicious that the same solicitor of the original receiver be retained to act as his solicitor.

It is the contention of the substituted receiver that the circumstances warranted the retention of counsel by the substituted receiver.

The order appointing counsel for the receiver (p. 48) is an interlocutory order of the Court of Chancery and any appeal from the order retaining counsel should be taken within forty days from the date of such order as provided for in Pamphlet Laws of 1902 as amended in 1914, Chapter 86, p. 133, which reads as follows:

“All persons aggrieved by any order or decree of the Court of Chancery, any appeal from the same or any part thereof to the Court of Errors and Appeals; and all ap-

peals except from final decrees shall be made within forty days after filing the order or decree appealed from."

Therefore, the right of appeal has been waived.

It is therefore respectfully submitted that the receiver was entitled to the appointment of counsel and that the allowance of a counsel fee was proper.

POINT III.

The allowances to the receiver of \$750.00 and to his counsel of \$750.00 were not excessive and were conscionable and reasonable for the amount of work done by the receiver and his counsel. The rule has been very well stated by Vice-Chancellor Church in the case of *Bock v. Columbia Brewing Co.*, 99 N. J. Eq. 617, in which he states:

"In determining amounts of allowances to counsel and receiver in dissolution of corporation, quantum of estate, as well as work done, must be considered."

The total amount of moneys in the receiver's hands was \$7,000.00. The receiver and his counsel received for their allowances the amount requested by them from the court and were not cut down as suggested by the appellant. \$750.00 was asked by the receiver and by his counsel on the application for allowances and this amount was allowed each. The receiver and his counsel, at the time of the application for fees, set forth and enumerated to the court the amount of work done and the time consumed, and submitted an affidavit to that effect, but inadvertently said affidavit was not filed.

In the case of *Seidler v. Branford Restaurant, Incorporated*, 97 N. J. Eq. 531, Justice Lloyd, speaking for the Court of Errors and Appeals,

sustained an allowance of \$1,800.00 for the receiver and his counsel and \$150.00 for appraiser's fees in an estate of \$9,000.00. In this case also, the amount realized by the receiver was not sufficient to pay all the preferred claims. In the opinion of Justice Lloyd, he states as follows at page 535:

“Assuming that the conduct of the business by the receiver may not, in this particular case, have operated beneficially (although Vice-Chancellor Church in the instant case stated the converse to be the fact) it would be unfortunate, indeed, if the rule were that an officer of the court, acting under its direction, is dependent for his expenses and compensation on the success or failure in a commercial sense of his efforts in carrying out the order of the court. Receivers are but the arms of chancery, appointed to preserve the property of corporate and similar entities for the benefit of all parties in interest, and in cases of insolvency to administer the estate under the direction of the court. In theory of law, at least, a receiver has no part in his own selection, but stands as the representative of the court impartially between the parties. To hold that one thus chosen and thus serving should incur the expenses and perform the duties of the receivership at the risk of these expenses and services being beneficial or otherwise to the estate or to any of the parties in interest would be contrary to the whole theory of his office, deprive the courts of the services in many cases of competent administrators, and be subversive of the administration of this important branch of equity jurisdiction.”

In the case of *Seidler v. Branford Restaurant, Incorporated*, the percentage of allowances was greater than the amount allowed in the instant case.

The work performed by this receiver was voluminous, commencing on January 21, 1930, from the date of his appointment, until October, 1930. During this time the receiver was in active charge of the estate, held numerous conferences with various parties in interest, had great correspondence concerning the estate with various parties in interest, attempted to work out an adjustment between the various parties, conducted the sale, was obliged to institute contempt proceedings against the purchaser at the receiver's sale, was called upon to pass upon claims, all of which consumed a considerable length of time. From the date of the appointment until the conclusion of this estate, there was some work to be done by the receiver almost daily ranging from an hour's time per day to four and five hours per day. In addition, there were no funds with which to hire a watchman and the receiver made at least three or four visits each week to the premises in order to see that the same were preserved. The work of the counsel for the receiver was also exceedingly heavy as is borne out by the unusually large record in this case.

It is, therefore, respectfully submitted that the allowances made to the receiver and his counsel were no more than reasonable and conscionable in proportion to the amount of work done, and taking into consideration the quantum of the estate.

POINT IV.

The receiver respectfully submits that the receivership is not a dry or naked receivership, inasmuch as the claims of the secured creditors were not more than the value of the estate, and

consequently was justified in not abandoning the properties.

The total amount of secured claims amounted to the sum of \$8,417.00. The appraisal and affidavit of Frederick C. Henn (p. 23), one of the solicitors of the appellant, and the affidavit of Robert Broadman (p. 27), the purchaser from the receiver at the sale held on June 2, 1930, show that the value of the premises in question when completed would be not less than \$18,000.00 to \$20,000.00; that not more than \$2,500.00 was required to finish the construction of the building to make it ready for occupancy. Therefore, this would leave a net value of the building of not less than \$15,500.00 to \$17,500.00. Also, the appraisers' report (p. 35) of Samuel Hamburger and Louis E. Goldfarb show a net value of the building in its incompleated state of not less than \$11,000.00 to \$12,000.00.

It is respectfully submitted that the value of the estate greatly exceeded the amount of the claims of the secured creditors and that the receiver could not foretell what amount would be realized from the sale of the premises in question.

It is respectfully submitted that for the reasons heretofore stated, the decree of the Court of Chancery should be sustained as agreeable to equity and good conscience.

MAX H. HERBSTMAN,
Solicitor for and of Counsel with
Appellee-Respondent.

New Jersey Court of Errors and Appeals

Between

BURT DEVEAU,
Complainant,

and

PIROZZI CONSTRUCTION CORPORATION, a New Jersey Corporation,
Defendant.

FLORENCE A. SULLIVAN,
Appellant,

v.

DAVID WEINICK, Receiver of
Pirozzi Construction Corporation, a New Jersey Corporation,
Appellee-Respondent.

BRIEF FOR APPELLANT, FLORENCE A. SULLIVAN.

Preliminary Statement.

This case is before this Court on an appeal from the decree of the Court of Chancery, WALKER, C., CHURCH, V.-C., dismissing the exceptions to the final report of the receiver of the defendant corporation, Pirozzi Construction Corporation, approving the receiver's account and fixing the allowances to the receiver and his counsel.

Statement of Facts.

On November 29, 1929, complainant, Burt Deveau, a creditor of defendant, Pirozzi Construction Corporation, filed a bill in the Court of Chancery, to have the Pirozzi Construction Corporation, a New Jersey corporation, declared insolvent and upon the filing of said bill of complaint, an order to show cause, why the prayer of said bill should not be granted, was signed by Vice-Chancellor CHURCH, returnable December 3, 1929. On the return date of said order to show cause, one George D. Moore, Jr., was appointed temporary receiver, the said order of appointment also providing that the creditors and stockholders of the defendant corporation show cause on December 10, 1929, why the said receiver should not be continued or why some other person should not be appointed in his place or with him as co-receiver. The said return date in the last-mentioned order was continued to December 27, 1929, at which time, over the strenuous objections of secured creditors, and the objection of the defendant corporation, the said receiver was continued (p. 32).

On January 21, 1930, and without notice to the creditors or stockholders of the defendant corporation, on application of David Bobker, solicitor for complainant, the receiver, George D. Moore, Jr., heretofore appointed, without having first filed an account, was discharged and one David Weinick, a counsellor at law of this State, was appointed in his place and stead (p. 33). The said substituted receiver qualified and had an appraisal of the property made (p. 35) which showed that the building when completed, at a further cost of \$4,000.00, would be worth, at a quick sale, \$15,000.00 (p. 36). The said properties were the entire assets of said defendant corporation.

On February 20, 1930, the said substituted receiver filed a petition to sell said real estate, in which petition (p. 37) he enumerated the secured claims against said properties amounting in all to \$17,753.00, and, upon the filing of said petition, secured an order to show cause (p. 46) returnable February 25, 1930, why the prayer in said petition should not be granted, which petition and order to show cause were later abandoned.

On April 1st, 1930, the substituted receiver, notwithstanding the fact that he was an attorney-at-law of this State, filed a petition praying for the appointment of counsel (p. 48) and David Bobker, the former solicitor of the complainant, was appointed solicitor of the receiver (p. 50).

On April 1st, 1930, the substituted receiver filed another petition to sell part of the real estate free and clear of liens (p. 51), in which he again recites the secured creditors, whose claims total \$17,753.00, and obtained an order to show cause, returnable April 8, 1930 (p. 60), why the prayer of the petition should not be granted. On the return date of the order to show cause, the said application was opposed by this appellant, the Fidelity Union Title and Mortgage Guaranty Co., another mortgagee, and William Clark, trading as the Clark Roofing Co., representing \$16,463.00 of the \$17,753.00 worth of secured claims, but, notwithstanding the said objections to said application, an order was made on April 9, 1930 (p. 61), ordering a sale free and clear of all liens.

On May 6, 1930, and without notice, an amended order, to sell free and clear of liens, was entered (p. 69), the purpose of same being to correct an error in the description in the former orders, which error was not discovered until the property had been advertised and was ready for sale.

On June 4, 1930, the receiver filed his report of sale (p. 67), reporting that the said property had been sold to the highest bidder, one Robert Broadman, for \$7,000.00.

On June 3, 1930, and in accordance with the conditions of sale, application was made to Vice-Chancellor CHURCH to confirm the said sale and, on that day, an order was entered (p. 79), confirming the said sale and further ordering that the said \$7,000.00 be retained and held by the receiver, subject to the liens and priorities of mortgagees and lienors, the liens, if any, to attach to the proceeds of sale.

On May 6, 1930, an order limiting creditors (p. 65) was entered, and on June 16, 1930, an order barring creditors (p. 82) was entered.

On September 16, 1930, the final account of the receiver (p. 99) was filed and an order to show cause (p. 96) returnable September 30, 1930, why the receiver's account should not be allowed and the receiver discharged, was granted, which order to show cause, together with a notice (p. 95) signed by the receiver and his counsel of the amounts to be asked by the receiver and his counsel, and the solicitor for the complainant, were served on appellant.

On October 7, 1930, your appellant filed exceptions to the receiver's account (p. 104), but, notwithstanding the filing of said exceptions and the oral argument on same, the Chancellor, by CHURCH, V.-C., on October 7, 1930, signed an order (p. 8) approving the receiver's account, made allowances to the receiver and his counsel, discharged the receiver and permitted him to pay the balance of the moneys to the Clerk in Chancery to abide the outcome of the foreclosure action by this appellant, which foreclosure was commenced on Octo-

ber 5, 1929, long prior to the adjudication of the defendant corporation insolvent.

Subsequent to the discharge of the receiver, appellant was compelled to continue with his foreclosure proceeding for the purpose of determining the amounts and priorities of the respective lienors and due to the fact that by the discharge of the receiver it was an abandonment by the receiver of the balance of the properties owned by the defendant corporation, title of which vested in him upon the adjudication of insolvency.

Questions of Law Raised.

1. The exceptions to the receiver's account should have been sustained and the account disallowed and the receiver refused his discharge.
2. The substituted receiver being an attorney-at-law of this State was not entitled to counsel, there being no special circumstances shown.
3. The allowances to the receiver and his counsel were excessive and unconscionable.
4. The receiver, upon his appointment, should have realized that the amounts of the claims of the secured creditors was more than the value of the insolvent estate and that said receivership was a dry or naked receivership and should have asked leave of the Court of Chancery, as he later did with reference to the balance of the properties of said insolvent corporation to abandon the properties and be discharged, inasmuch as there would be no benefit to secured creditors by reason of the receivership.

ARGUMENT AND LAW.

POINT I.

(a) The receiver, although he went through the trouble and expense of entering an order limiting creditors and a decree barring creditors, failed to state in his final account all of the liens against said properties and failed and neglected to ascertain and find the order and priority of those liens as was his duty as said receiver. He left all of the creditors of said insolvent corporation in the same position at the close of his receivership as they were at his appointment, he having merely converted a part of the real estate of said insolvent corporation into cash, and that for less than one-half of the appraised value thereof. At the time of the appointment of said receiver, your appellant was foreclosing the mortgages held by him on the properties owned by said corporation and all of the creditors of said defendant corporation, who had filed liens, had been made party defendants. The only benefit, if benefit it may be called, that the mortgagees and lienors of the defendant corporation received from the appointment of a receiver of the defendant corporation and from his administration as such receiver, was in having part of the properties sold in the receivership proceeding and converted into cash. This might just as easily and certainly more expediently, and at less expense, been done in the foreclosure proceeding of your appellant, as the receiver, under order dated October 7, 1930 (p. 8), asked and obtained leave to deposit the balance of the funds after paying and satisfying the allowances with the Clerk of the Court of Chancery to abide the outcome of the proceeding, to determine the validity and pri-

orities of the respective mortgages and mechanic liens in the foreclosure action commenced by this appellant.

(b) The items of September 2, 1930, in the account of the receiver (p. 101) to Newark Star Eagle and Newark Evening News, were improperly allowed. Due to the negligence and carelessness of the receiver in preparing the original order to sell free and clear of liens in misdescribing the property and not discovering the error until just prior to the sale, it was necessary for him to secure an amended order to sell free and clear of all liens and re-advertise the said properties over again. The estate should not be charged with the negligence and carelessness of the receiver or his counsel.

(c) The item of September 3, 1930, in said account (p. 101) to the Passaic Bergen Lumber Company for doors supplied to George Moore, former receiver, should have been disallowed. The original receiver, George D. Moore, Jr., filed no account and the subsequent receiver was under no legal duty to account for the administration of his predecessor. The Court of Chancery, speaking through Vice-Chancellor VAN FLEET, in the case of *Lehigh Coal & Nav. Co. v. Central Railroad*, 41 N. J. Eq. 167, at page 171, said:

“I have always supposed the law on this subject to be so firmly settled as to be beyond all question, and that it had become an axiom that only the parties to a contract, or their legal representatives, were bound by it, or liable at law for breaking it.”

Thus the Vice-Chancellor reasoned that contracts made by a preceding receiver imposed no legal duty or obligation on his successor.

(d) The receiver failed to attach to his account the vouchers showing the payments although the rules and practice of the Court of Chancery require that an itemized statement of the moneys received and accumulated interest, if any, and disbursements together with the vouchers showing the payments made, should be attached to the account and filed therewith. In the case of *Conover v. West Jersey Mortgage Co.*, 126 At. 855, at page 857, the Court said: **96 N.J. Eq. 441.**

“It is the duty of the courts, whether objections are or are not made by creditors, to supervise and closely scrutinize trust accounts.”

The Court further said (p. 861):

“There is no reason why the creditors of an estate in the hands of a receiver should receive any less protection on an accounting in chancery than is required by statute and rule in the probate courts. It is hardly to be expected, and should not be required, that small creditors should either in person or by counsel inspect the accounts of receivers and file exceptions as the only method of protecting themselves on an accounting.”

It is, therefore, respectfully submitted that the exceptions to the receiver's account should have been sustained and the account disallowed.

POINT II.

The substituted receiver being an attorney-at-law of this State was not entitled to counsel, there being no special circumstances shown; therefore, any allowance to counsel for the receiver was improper.

Vice-Chancellor LANE, speaking for the Court of Chancery, in the case of *Bailey v. Glormine*, 102 At. page 634, laid down the following rule:
88N.J. Eq. 254

“A lawyer appointed as receiver is expected to act as his own counsel, except under extraordinary circumstances.”

This is still the law today. There were no such extraordinary circumstances shown or recited in the receiver's petition for the retention of counsel (p. 48) and it was, therefore, improper for the Court to appoint counsel for a lawyer receiver. The only duty performed by the receiver, being the sale of the properties, the collection of the purchase price, the application for his fee and fees for his counsel and the turning over of the moneys received, less the allowance made by the Court, to the Clerk in Chancery. He did not even attempt to find the amount and priorities of the various creditors' claims and make distribution, but left the creditors as he found them to have their rights determined in the foreclosure action commenced by this appellant previous to the adjudication of insolvency.

Chancellor WALKER, speaking for the Court of Chancery in the case of *Conover v. West Jersey Mortgage Co.*, 126 At. page 855, at page 858, said:
96 N.J. Eq. 441.

“And while a receiver should be allowed reasonable counsel fees for legal services rendered necessary in the discharge of his duties, he will not be allowed fees paid to counsel for services which are the ordinary duties he is presumed to know how to perform.”

The receiver performed no duties nor was the insolvency of the defendant corporation such a complicated cause as required the assistance of counsel.

It is, therefore, respectfully submitted that the receiver was not entitled to the appointment of counsel and there should, therefore, be no allowance of counsel fee. And counsel for the receiver should be ordered to pay the same to the Clerk in Chancery or your appellant.

POINT III.

The allowances to the receiver of \$750.00 and to his counsel of \$750.00 were excessive and unconscionable. The general rule for the allowance to a receiver and his counsel, in cases of dissolution of an insolvent corporation, has been very well stated by Vice-Chancellor CHURCH, speaking for the Court of Chancery in the case of *Bock v. Columbia Brewing Co.*, 133 At. page 516, where the learned Vice-Chancellor said: **99 N.J.Eq.617.**

“In determining amounts of allowances to counsel and receiver in dissolution of corporation, quantum of estate, as well as work done, must be considered.”

The receiver in his final account charges himself with \$6,823.51, but, notwithstanding the small amount of the estate, in the notice, sent to the creditors of the application for receiver's and counsel fee (p. 95), he states that he will request an allowance of \$1,250.00, as receiver, \$1,250.00 to his counsel and an allowance of \$150.00 to the solicitor for the complainant, who, incidently, was also the solicitor for the receiver. These allowances, if made, would have been 39% of the amount realized by him as receiver. We see no reason why such an unconscionable request should have been made except that, as so aptly stated by Vice-Chancellor LANE in the case of *Bailey v. Glormine*, 102 At. page 634, **88 N.J. Eq. 254.** where the learned Vice-Chancellor in commenting on this practice said:

“There has been a tendency sometimes for officers of the court to ask for more than the services may be said to be reasonably worth upon the assumption that the court will, in any event, upon objection, cut down the allowances. The court ought to be able to rely implicitly upon the representation of its officers

that in the view of those officers the amounts that were asked for are proper."

We cannot conceive that the receiver and his counsel ever hoped to receive the full amount which they notified creditors they would ask for, and their only object, as so tersely stated by Vice-Chancellor LANE, was to ask for a sum large enough so that, when the Court would cut it down, they would be more than amply repaid for the work done. The receiver and his counsel filed no statement as to the amount of work done, the time consumed, or anything that would give the Court an accurate idea on which to base the allowances. The fee allowed to the receiver and his counsel, based on the quantum of the estate realized, amounts to more than 21% of the value of the estate. This, we contend, is beyond question excessive and unconscionable.

Vice-Chancellor LANE in the case of *Bailey v. Glormine*, *supra*, after commenting that the receiver had performed his duties with most painstaking care and efficiency and had realized the sum of \$13,000.00, held, that he was entitled to a fee of \$750.00, for acting in both the capacity of receiver and solicitor, thus granting an allowance of practically 6% of the quantum of the estate.

The chancellor in the case of *Unger v. Newlin Haines Co.*, 122 At. page 114/^{95 N.J. Eq. 16} after reiterating the rule laid down by Vice-Chancellor CHURCH in *Bock v. Columbia Brewing Co.*, *supra*, allowed the receiver and his counsel the sum of \$45,000.00 on an estate of \$1,000,000.00, or 4½% of the quantum of the estate.

In the case of *Eisler v. Interstate Title Examiners, Inc.*, 148 At. page 651/^{106 N.J. Eq. 88} which was an appeal from the Court of Chancery to this Court on the questions of allowances to the receiver and his counsel, the Court held:

“Where receiver of insolvent corporation handled assets of approximately \$25,000.00 allowance of \$2,500.00 as compensation for receiver’s services, of \$2,500.00 as attorney fee, and \$1,000.00 to auditor, held excessive, and would be reduced to allowance of \$1,000.00 to receiver and like amount to his counsel and \$250.00 to auditor.”

The allowances asked in the Court of Chancery amounted to 20% of the total value of the estate handled and this Court in that case, speaking through the Chief Justice, held the amount excessive and reduced them from 20% to 8% of the quantum of the estate.

Vice-Chancellor CHURCH, before whom this case was heard, in the lower court in the case of *Bock v. Columbia Brewing Co.* took a radically different view of substantially the same question, namely, of amounts to be allowed receivers and their counsel for their services. In that case the receiver sold the property of the corporation for \$56,000.00 and requested an allowance of \$10,000.00. The learned Vice-Chancellor in that case held that the request was excessive and allowed the sum of \$4,500.00 or approximately 8% of the amount of the estate. The learned Vice-Chancellor, in that case, further remarked:

“While I have no doubt that the receivers and their counsel did excellent work and sold the property to the best advantage, I believe such a percentage of the estate for allowances is excessive. Consideration must be given, not only to the work done, but to the quantum of the estate.”

In the present case, the receiver sold the property for less than one-half of the appraised value thereof (p. 36). The same Vice-Chancellor, in the case of *In re New Jersey Refrigerating Co.*, 142 At. page 176, in an application for receivers’ and coun-
 103 N. J. Eq. 5

sel allowances, where the receivers handled \$4,291,096.98, said:

"The receivers asked for \$10,000.00 apiece on this account. If I allowed them this on the moneys they have actually handled, it would amount to about 2-1/3%. I think their request is excessive. I will allow the receivers \$4,000.00 each. I do this largely in consideration of the quantum of the estate, and not because of any serious work they have performed.

"The counsel requests the sum of \$15,000.00. The memorandum submitted is vague as to what actual work counsel did in this matter.

"I fail to see how I can allow the sum asked for. In my opinion \$2,000.00 is ample for the services rendered, according to this account."

In the present case, no memorandum, whatsoever, was submitted to show the amount of work done.

The Vice-Chancellor cannot have been correct in both of the foregoing decisions and in the present instance, and we respectfully submit that the decision in the *Bock v. Columbia Brewing Co.* and in the *New Jersey Refrigerating* cases is more in keeping with equity and justice than the allowances made in the present case.

In the case of *Glazer v. Achtel-Stettens Restaurant, Inc.*, 149 At. page 44, ^{106 N.J. Eq. 150} which was an appeal from the Court of Chancery in which the question of allowances to receiver and his counsel were involved, Justice KAUSCH speaking for the Court said:

"Allowance of \$2,500.00 to receiver of corporation where proceeds of sale of assets were \$6,706.00, which was insufficient to pay preferred claims, held excessive by \$2,200.00.

"Allowance made to counsel of receiver of corporation where proceeds from sale of assets realized \$6,706.00 which was insufficient

to pay preferred claims held excessive by \$2,350.00.”

In that case, as in the present case, the amount realized was insufficient to pay the secured claims in full and this Court reduced the allowances.

In the present case the sum of \$6,823.51 was realized and we respectfully submit that the Court should, in this case, as in the *Achtel-Stetters Restaurant, Inc.*, case, reduce the allowances in the same proportion.

It is, therefore, respectfully submitted that the allowances made to the receiver and his counsel are excessive and should be reduced.

POINT IV.

The receiver, upon his appointment, should have realized that the claims of the secured creditors were more than the value of the estate and that the receivership was a dry or naked receivership and should have asked leave of the Court of Chancery to abandon the properties and be discharged.

Justice KALISCH speaking for the Court of Errors and Appeals, in the case of *Glazer v. Achtel-Stetters Restaurant, Inc.*, 149 At. page 44, at page 46, said: **106 N.J. Eq. 150.**

“The fact that there were preferred claims of creditors which would more than exhaust the assets of the estate was, in itself, sufficient to stay the intervention of the Court of Chancery in the matter.”

The receiver realized as early as the petition to sell real estate, that the claims of the secured creditors greatly exceeded the value of the estate. Yet, notwithstanding that fact, he continued to administer the estate and to sell part of the properties over objection of the secured creditors.

The learned justice also laid down the rule that "Where it appeared early in pendency of receivership of corporation, that nothing would be realized from assets which could pay in full, or even a substantial part thereof of preferred claims, the Court should have discharged receiver and dismissed the bill."

The receiver in the present instance should have applied to the Court to be discharged and for a dismissal of the bill.

It is, therefore, respectfully submitted that, the receiver having neglected to inform the Court that the claims of the secured creditors exceeded the value of the estate, he should be discharged without any compensation, and be ordered to return to the Clerk in Chancery or this appellant the allowance made to him and his counsel.

It is, therefore, respectfully submitted that for the reason heretofore stated the decree of the Court of Chancery should be set aside, or so modified as to be agreeable to equity and good conscience.

HENN & BURR,
*Solicitors for and of Counsel with
Appellant, Florence A. Sullivan.*

