

# INDEX

	PAGE
Bill of Complaint .....	1
Schedule A. ....	8
Schedule B. ....	16
Schedule C. ....	18
Schedule D. ....	19
Answer .....	21
Order to Amend Answer .....	25
Amended Answer .....	26
Opinion of Vice-Chancellor .....	118
Final Decree .....	125
Order Amending Final Decree .....	135
Notice of Appeal .....	137
Amended Notice of Appeal .....	138
Petition of Appeal .....	139
Answer to Petition of Appeal .....	142
Notice of Argument .....	143
Stipulation .....	144

## TESTIMONY.

### *For Complainant.*

Edward D. Newman,	
direct examination.....	30
cross " .....	37
(recalled) direct " .....	82
John Kelley,	
direct examination.....	73
Samuel Limenfeld,	
direct examination.....	74
cross " .....	76
Stanley Newman,	
direct examination.....	78
cross " .....	80
Arthur Newman,	
direct examination.....	80
cross " .....	81

	PAGE
<i>For Defendant.</i>	
William J. Eypper, direct examination.....	46
cross " .....	56
George H. Beckmann, direct examination.....	63
cross " .....	69
(recalled) direct " .....	83

EXHIBITS.	
	Off'd P't'd
C. 1. Contract .....	31 85
C. 2. Certificate of Incorporation of Eypper & Beckmann, Inc.	32 92
C. 3. Certificate of Incorporation of Ritz Realty Corporation.	32 100
C. 4. Letter, September 25, 1925..	34 107
C. 5. Letter, September 30, 1925..	35 108
C. 6. Letter, October 7, 1925.....	36 109
C. 7. Letter, October 3, 1925, New- man to Popek .....	36 110
C. 8. Letter, October 3, 1925, New- man to Eypper and Beck- mann, Inc. ....	36 111
C. 9. Assignment of Contract ....	37 112
C. 10. Check for \$500.00.....	37 115
C. 11. Check for \$2,500 .....	37 115
C. 11. Binder .....	76
C. 12. Certified Check for \$9,000.00.	45
D. 1. Telegram, November 11, 1925	50 116
D. 2. Telegram, August 12, 1925..	53 116
D. 3. Check for \$3,000.00.....	68 117

*Bill of Complaint.*

**BILL OF COMPLAINT.**

Filed October 29, 1925.

**In Chancery of New Jersey**

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To the Honorable Edwin Robert Walker, Chan-  
cellor of the State of New Jersey:

The complainant, Ritz Realty Corporation, a  
corporation of the State of New Jersey, respect-  
fully shows that:

1. On August 5, 1925, Eypper & Beckmann,  
Incorporated, a corporation organized and exist-  
ing under the laws of the State of New Jersey,  
entered into a certain contract in writing, a true  
copy of which is hereto annexed and made a part  
hereof, and marked Schedule "A," whereby it  
agreed to convey to one Edward D. Newman of  
the City, County and State of New York for the  
sum of thirty-five thousand three hundred sev-  
enty-two dollars (\$35,372.00) (but not in excess  
of \$1,300.00 per acre) ALL those tracts or par-  
cels of land and premises hereinafter particu-  
larly described, situate, lying and being in the  
Township of Teaneck in the County of Bergen  
and State of New Jersey, and which are plotted,  
laid out and designated on a certain map on file  
in the Clerk's Office of the County of Bergen,  
entitled "Map of Property of John V. H. Ter-  
hune, dec'd., Bergen Co., N. J., 1895, Willard  
Cass, C. E.," and which in a certain deed made  
by Cornelius J. Terhune and wife to said Conrad  
Gemmer, which deed is dated August 10, 1896,  
and is recorder in the Bergen County Clerk's  
Office in Book 437 of Deeds, page 137, etc., are  
described as follows:

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*Bill of Complaint.*

THE FIRST TRACT, begins in the centre of Teaneck Public Road at a point where the center line of said road and the southerly line of lot number two intersect, from thence running (1) North thirty-three degrees five minutes East three hundred and seven and eight tenths feet to land of W. W. Phelps, thence (2) South sixty degrees and fourteen minutes East thirteen hundred and fourteen and four tenths feet; thence (3) South twenty-six degrees fifteen minutes west one hundred and fifty feet to the land of said Phelps,

10 #2  
thence (4) North sixty degrees and thirty minutes West seven hundred and seventy-five feet, thence (5) South thirty-three degrees, fifteen minutes west two hundred and seventy-five feet; thence (6) South eighty-three degrees, fifteen minutes west sixty-seven feet, thence (7) North sixty-one degrees twenty-five minutes west eighty-five feet; thence (8) North fifteen degrees west twenty-one and seventy-four hundredths feet; thence (9) North ten degrees twenty-five minutes west one hundred and one and sixty-four hundredths feet, thence (10) North fifteen degrees twenty-five minutes West sixty-six feet; thence North sixty degrees ten minutes West two hundred and seventy-two feet and three tenths of a foot to the center of said road, and place of Beginning. Containing four and nine tenths acres. Being plot number two (2) on said map.

30 THE SECOND TRACT, begins in the center line of Teaneck public road, where the same is intersected by the center of a lane dividing the premises being described, from lands of Benjamin Parker, from thence running (1) North thirty-three degrees five minutes east two hundred and  
40 ninety-three and seven tenths feet, thence (2)

*Bill of Complaint.*

South sixty degrees ten minutes east two hundred and seventy-two and three tenths feet; thence (3) South fifteen degrees twenty-five minutes east sixty-six feet; thence (4) south ten degrees twenty-five minutes east one hundred and one and sixty-four one hundredths feet, thence (5) South fifteen degrees east twenty-one and seventy-four hundredths feet; thence (6) South sixty-one degrees twenty-five minutes east eighty-five feet to the center of the Brook near the south end of the mill pond, thence (7) Down said Brook its several courses to the center of said lane aforesaid, thence (8) North sixty degrees twenty-five minutes west six hundred and twelve feet to the center of the Teaneck Road aforesaid, being plot three on said map and containing three acres and five tenths of an acre.

20 #3.  
Excepting, and reserving therefrom, however, the following: Beginning in the southwesterly corner of plot number three at the intersection of the center lines of Teaneck Road and said lane, thence (1) Along the center line of Teaneck Road north thirty-three degrees five minutes east two hundred feet, thence (2) South sixty degrees twenty-five minutes east three hundred and sixty two and ninety-seven hundredths feet, thence (3) South ten degrees twenty-five minutes east forty-one and ninety-eight hundredths feet, thence (4) South eleven degrees twenty-five minutes east twenty-one and seventy-four hundredths feet; thence (5) South sixty-one degrees twenty-five minutes east seventy-nine feet; thence (6) South sixteen degrees twenty-five minutes east twenty-five feet; thence (7) North seventy-three degrees twenty-five minutes east seven feet to the center of Brook, thence (8) Down said brook its several

Bill of Complaint.

courses, to the center of said land aforesaid, thence (9) North sixty degrees twenty-five minutes west six hundred and twelve feet to the center of Teaneck Road aforesaid, the point of beginning. Containing two and thirty-six hundred and seventy-eight ten thousandths acres.

10 THE THIRD TRACT, begins in the southwesterly corner of the plot being described and in the line of lands of the estate of W. W. Phelps, thence running (1) North thirty-nine degrees and thirty-two minutes east three hundred and sixty-eight and eight tenths feet; thence south fifty-nine degrees six minutes east fifteen hundred and forty one and seventy-five hundredths feet, thence South sixty-one degrees and six minutes east seven hundred and thirty feet; thence through 20 the middle of a creek its several courses as on said map easterly, to the west side of Drainage Canal running from Englewood to the Overpeck Creek, thence returning to the beginning point and running south sixty-two degrees and twenty-  
#4.

two minutes East sixteen hundred and twenty feet; thence south fifty-eight degrees and forty-five minutes east twelve hundred and eighty feet to the west bank of said canal, and thence north- 30 erly along the west bank of said canal to the end of the fourth course and creek aforesaid, as shown on said map. Being plots five and six on said map. Plot five containing eleven acres and five thousand two hundred and ninety-five ten thousandths of an acre. Plot six containing eight acres and two hundred and seventy-three one-thousandths acres.

40 THE FOURTH TRACT, beginning in the southwesterly corner of said tract at a marked tree, and running thence (1) North twenty-six degrees

Bill of Complaint.

fifteen minutes east one hundred and fifty feet; thence (2) South fifty-seven degrees forty-four minutes east three hundred and thirty-seven and four tenths feet; thence (3) South forty-eight degrees forty-three minutes west seventy-one feet; thence (4) South forty-four degrees and thirty-eight minutes west seventy-nine and two tenths feet thence (5) North fifty-eight degrees twenty-nine minutes west two hundred and eighty-four and six tenths feet to the place of beginning. Being plot number four on said map and containing one acre and three hundred and seventy-five ten thousandths of an acre.

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Being the same premises conveyed to said Cornelius J. Terhune by Jacob Terhune *et ux* by deed dated September 2, 1895 and recorded in the Bergen County Clerk's Office in Book 412 of Deeds, pages 65 etc.

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Together with all the right, title and interest of said Cornelius J. Terhune in and to a certain right-of-way granted to him by John J. Phelps, William E. Bond and Thomas R. White, Executors of the last will and testament of William Walter Phelps, deceased, by a certain grant of right-of-way between lots four (4) and five (5) aforesaid, under agreement dated August 20,

30

#5. 1896, and subject to the conditions therein expressed."

Being the same lands conveyed to the aforesaid Eypper & Beckmann, Incorporated, by Conrad Gemmer and Anna Elizabeth Gemmer, his wife by deed dated July 1st, 1925 and recorded July 13th, 1925.

2. Three thousand dollars (\$3,000.00) of the consideration for said lands as mentioned in the

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*Bill of Complaint.*

contract was duly paid by said Edward D. Newman to the said Eypper & Beckmann, Incorporated, upon the execution and delivery of said contract.

10 3. Said contract provided among other things that the deed should be delivered upon receipt of the payments referred to in said contract at the office fo Eypper & Beckmann, Incorporated, at 12 o'clock, November 5, 1925, or before, at the option of the purchaser, by giving five days' notice in writing. Said contract further provided "The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties."

20 4. On September 23, 1925, the said Edward D. Newman for a valuable consideration duly assigned all his right, title and interest in and to said contract by assignment in writing, a copy of which is hereto annexed and made a part hereof and marked Schedule "B," to the complainant.

30 5. On October 7, 1925, complainant exercising its rights under said contract and assignment duly notified the said Eypper & Beckmann, Incorporated, that it desired to complete the said contract on October 2, 1925, at the Peoples Trust & Guaranty Company of Hackensack, New Jersey, a copy of which notice is hereto annexed and made a part hereof and marked Schedule "C," and to receive the deed provided for therein. After the receipt of this notice by the defendant, the defendant by its attorney informed complainant that it would not carry out the terms of said contract and repudiated the same.

*Bill of Complaint.*

#6.

5. At said time and place complainant through its agents and servants appeared, and was ready, willing and able to perform all covenants and conditions of said contract, but the defendant, its agents and servants failed to appear. 10

6. Notwithstanding such refusal and repudiation by the defendant, complainant again informed the defendant in writing, a copy of which notice is hereto annexed and marked Schedule "D," that it desired to carry out and complete said contract, and would be ready, willing and able so to do on October 14th, at three o'clock in the afternoon at the office of the defendant.

7. At said time and place complainant through its agents and servants appeared and 20 tendered performance of all the covenants and conditions of said contract to be performed by complainant, but the defendant, its agents and servants again refused and still does refuse to perform said contract.

8. Complainant is desirous of obtaining a conveyance of the lands and premises contracted to be conveyed as aforesaid, and has always been ready, willing and able to perform said contract, and still ready, willing and able so to do. 30

9. Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Eypper & Beckmann, Incorporated who are the defendants to this suit, may answer this complaint and each statement therein made.

2. That the said Eypper & Beckmann, Incorporated, may be decreed specifically to perform the said agreement entered into by said Edward 40

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*Bill of Complaint—Schedule A.*

D. Newman and duly assigned to complainant; complainant tendering itself ready and willing, and hereby offering specifically, to perform the said agreement on its part.

#7.

10 3. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

MACKEY & MACKEY,  
Solicitors for and of Counsel with Complainant.

**Schedule A.**

20 AGREEMENT, made and dated August 5, 1925, between Eypper & Beckmann, Incorporated, a corporation of the State of New Jersey, hereinafter described as the seller, and Edward D. Newman of the City of New York in the County of New York and State of New York hereinafter described as the purchaser:

30 WITNESSETH, that the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot or parcel of land, with the buildings and improvements thereon, in the Township of Teaneck, County of Bergen and State of New Jersey described as follows: ALL those tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Township of Teaneck in the County of Bergen and State of New Jersey, and which are plotted, laid out and designated on a certain map on file in the Clerk's Office of the County of Bergen, entitled "Map of Property of John V. H.

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*Bill of Complaint—Schedule A.*

Terhune, dec'd Bergen Co., N. J. 1895, Willard Cass. C. E." and which in a certain deed made by Cornelius J. Terhune and wife to said Conrad Gemmer, which deed is dated August 10, 1896 and is recorded in the Bergen County Clerk's Office in Book 437 of Deeds, pages 137 etc., are described as follows: THE FIRST TRACT, beings in the center of Teaneck Public Road at a point where the center line of said road and the southerly line of lot number two intersect, from thence running (1) North thirty-three degrees five minutes East three hundred and seven and eight tenths feet to land of W. W. Phelps, thence (2) South sixty degrees and fourteen minutes East thirteen hundred and fourteen and four tenths feet; thence (3) South twenty-six degrees fifteen minutes west one hundred and fifty feet to the land of said Phelps, thence (4) North sixty degrees and thirty minutes West seven hundred and seventy-five feet, thence (5) South thirty-three degrees, fifteen minutes west two hundred and seventy-five feet; thence (6) South eighty-three degrees, fifteen minutes west sixty-seven feet, thence (7) North sixty-one degrees twenty-five minutes west eighty-five feet, thence (8) North fifteen degrees west twenty-one and seventy-four hundredths feet, thence (9) North ten degrees twenty-five minutes west one hundred and one and sixty-four hundredths feet; thence (10) North fifteen degrees twenty-five minutes west sixty-six feet, thence North sixty degrees ten minutes West two hundred and seventy-two feet and three thenths of a foot to the center of said road, and place of beginning. Containing four and nine tenths acres. Being plot number two (2) on said map.

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*Bill of Complaint—Schedule A.*

THE SECOND TRACT, begins in the center line of Teaneck Public road, where the same is intersected by the center of a lane dividing the premises being described, from lands of Benjamin Parker, from thence running (1) North thirty-three degrees five minutes east two hundred and

10 ninety-three and seven tenths feet; thence (2) South sixty degrees ten minutes east two hundred and seventy-two and three tenths feet; thence (3) South fifteen degrees twenty-five minutes east sixty-six feet, thence (4) South ten

#2.

degrees twenty-five minutes east one hundred and one and sixty-four one hundredths feet, thence (5) South fifteen degrees east twenty-one and seventy-four hundredths feet, thence (6)

20 South sixty-one degrees twenty-five minutes east eighty-five feet to the center of the Brook near the south end of the mill pond, thence (7) Down said brook its several courses to the center of said lane aforesaid, thence (8) North sixty degrees twenty-five minutes west six hundred and twelve feet to the center of the Teaneck Road aforesaid, being plot three on said map and containing three acres and five tenths of an acre.

30 Excepting and reserving therefrom, however, the following: Beginning in the southwesterly corner of plot number three at the intersection of the center lines of Teaneck Road and said lane, thence (1) Along the center line of Teaneck Road north thirty-three degrees five minutes east two hundred feet thence (2) South sixty degrees twenty-five minutes east three hundred and sixty two and ninety-seven hundredths feet, thence (3) South ten degrees twenty-five minutes east forty-one and ninety-eight hundredths feet;

40 thence (4) South eleven degrees twenty-five

*Bill of Complaint—Schedule A.*

minutes east twenty-one and seventy-four hundredths feet; thence (5) South sixty-one degrees twenty-five minutes east seventy-nine feet, thence (6) South sixteen degrees twenty-five minutes east twenty-five feet, thence (7) North seventy-three degrees twenty-five minutes east seven feet, to the center of Brook, thence (8) Down said

10 brook its several courses, to the center of said land aforesaid, thence (9) North sixty degrees twenty-five minutes west six hundred and twelve feet to the center of Teaneck Road aforesaid, the point of beginning. Containing two and thirty-six hundred and seventy-eight ten thousands acres.

THE THIRD TRACT, begins in the southwesterly corner of the plot being described and in the line of lands of the estate of W. W. Phelps, thence

20 running (1) North thirty-nine degrees and thirty-two minutes east three hundred and sixty-eight and eight tenths feet, thence south fifty-nine degrees six minutes east fifteen hundred and forty-one and seventy-five hundredths feet, thence South sixty-one degrees and six minutes east seven hundred and thirty feet, thence through the middle of a creek its several courses as on said map easterly, to the west side of Drainage Canal running from Englewood to the Overpeck Creek,

30 thence returning to the beginning point and running south sixty-two degrees and twenty-two minutes East sixteen hundred and twenty-feet, thence south fifty-eight degrees and forty-five minutes east twelve hundred and eighty feet to the west bank of said canal, and thence northerly along the west bank of said canal to the end of the fourth course and creek aforesaid, as shown on said map. Being plots five and six on said map. Plot five containing eleven acres and five

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Bill of Complaint—Schedule A.

thousand two hundred and ninety-five ten thousandths of an acre. Plot six containing eight acres and two hundred and seventy-three one-thousandths acres.

10 THE FOURTH TRACT, beginning in the south-westerly corner of said tract at a marked tree, and running thence (1) North twenty-six degrees fifteen minutes east one hundred and fifty feet, thence (2) South fifty-seven degrees forty-four minutes east three hundred and thirty-seven and four tenths feet; thence (3) South forty-eight degrees forty-three minutes west seventy-one feet, thence (4) South forty-four degrees and thirty-eight minutes west seventy-nine and two tenths feet thence (5) North fifty-eight degrees

20 #3. twenty-nine minutes west two hundred and eighty-four and six tenths feet to the place of beginning. Being plot number four on said map and containing one acre and three hundred and seventy-five ten thousandths of an acre.

30 Being the same premises conveyed to said Cornelius J. Terhune by Jacob Terhune *et ux* by deed dated September 2, 1895 and recorded in the Bergen County Clerk's Office in Book 412 of Deeds, pages 65, etc.

40 Together with all the right, title and interest of said Cornelius J. Terhune in and to a certain right-of-way granted to him by John J. Phelps, William E. Bond and Thomas R. White Executors of the last will and testament of William Walter Phelps, deceased, by a certain grant of right-of-way between lots four (4) and five (5) aforesaid, under agreement dated August 20, 1896, and subject to the conditions therein expressed."

Bill of Complaint—Schedule A.

Being the same lands conveyed to the aforesaid Eypper & Beckmann, Incorporated, by Conrad Gemmer and Anna Elizabeth Gemmer, his wife by deed dated July 1st, 1925 and recorded July 13th, 1925.

10 In the event the party of the second part shall fail to perform any of the agreements on its part herein contained, all right of the party of the second part to this agreement shall become null and void and all moneys theretofore paid thereon become forfeited by the party of the second part to the party of the first part and this shall be without recourse at law by the party of the second part.

20 The party of the second part agrees that the party of the first part shall be entitled to the use of said lands until the date of delivery of deed and to all the crops of fruit and grain now growing thereon.

This sale covers all right, title and interest of the seller of, in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining said premises, to the center line thereof.

30 The price is THIRTY-FIVE THOUSAND THREE HUNDRED SEVENTY-TWO (\$35,372) Dollars (But not in excess of \$1300. per acre) payable as follows: THREE THOUSAND (\$3,000).....Dollars on the signing of this contract, the receipt of which is hereby acknowledged.

40 NINE THOUSAND (\$9,000).....Dollars in cash or by certified check on the delivery of the deed as hereinafter provided, and interest at the rate of six per cent. (6%) per annum from September 1st, 1925 on the balance due, time being declared as of the essence of this contract.

Bill of Complaint—Schedule A.

\$17,000 by assuming a mortgage now a lien on said premises, payable July 1, 1930.

\$6,372 by execution of a purchase money mortgage to run for two years from date of delivery of deed with stipulation that mortgagor shall

10 #4.

pay \$1,000 or more on account of principal every six months after the date thereof, said mortgage to contain a release clause stipulating that the mortgagee will release the tracts described as plots number 2 and number 3 of said map upon payment of \$4,000 and all the remainder of the property hereby described upon payment of \$2,-372.

20 Said mortgage may be executed by the party of the second part or his assigns.

The deed shall be delivered upon the receipt of said payments at the office of EYPPER & BECKMANN, Inc. at twelve o'clock, November 5th, 1925, or before, at the option of purchaser by giving 5 days notice in writing.

Taxes, rents, insurance, water rents, and interest on mortgages if any, are to be apportioned, as of September 1st, 1925.

30 The deed shall be in proper form for record, shall contain the usual covenants and warranty, and shall be duly executed and acknowledged by the seller, at the seller's expense, so as to convey to the purchaser the fee simple of the said premises, free of all encumbrances except as herein stated.

It is understood and agreed that any assessment confirmed and entered prior to the date of closing, shall be paid by the seller in full.

Bill of Complaint—Schedule A.

The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

10

The seller agrees that brought about this sale and agrees to pay the broker's commission therefor.

WITNESS the signatures and seals of the above parties.

Signed, sealed and delivered in the presence of

EYPPER & BECKMANN, INC. (L. S.)

WM. J. EYPPER, Pres't (L. S.)

EDWARD D. NEWMAN (L. S.) 20

SEAL OF EYPPER & BECKMANN Inc.

STATE OF NEW JERSEY, }  
COUNTY OF BERGEN. } ss.

BE IT REMEMBERED, That on this day of in the year of Our Lord, One Thousand Nine Hundred and Twenty-five, before me, the subscriber, a

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personally appeared who, I am satisfied, mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon acknowledged that

signed, sealed and delivered the same as voluntary act and deed for the uses and purposes therein expressed.

Bill of Complaint—Schedule B.

Schedule B.

FOR VALUE RECEIVED, the amount and sufficiency whereof is hereby acknowledged, I hereby assign, transfer and set over unto the Ritz Realty Corporation, a New Jersey Corporation, its successor, successors and assigns, all my right, title and interest of, in and to the certain agreement, dated August 5th, 1925 between Eypper & Beckmann, Inc., described therein as the seller and the undersigned, Edward D. Newman, described therein as the purchaser, for the sale of the tracts of parcels of land and premises fully and particularly described in the said agreement, situated, lying and being in the Township of Teaneck, County of Bergen, State of New Jersey, which said landed premises are the same premises conveyed to the aforesaid Eypper & Beckmann, Inc. by Conrad Gemmer and Anna Elizabeth Gemmer, his wife, by deed dated July 1st, 1925, and recorded July 13th, 1925, and hereby authorize and direct the said Eypper & Beckmann, Inc. to convey the said premises to the said Ritz Realty Corporation.

The said Ritz Realty Corporation hereby accepts this assignment and hereby assumes the performance of the said agreement and hereby agrees to fully carry out and perform the same.

WITNESS, the following signatures and seals this 23rd day of September, 1925.

(SEAL)

RITZ REALTY CORPORATION,

By M. Mehr, (L. s.)  
President

EDWARD D. NEWMAN. (L. s.)

Attest:

JEANETTE KAPLAN,  
Secretary

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Bill of Complaint—Schedule B.

STATE OF NEW YORK }  
COUNTY OF NEW YORK }<sup>ss</sup>:

BE IT REMEMBERED, that on this 30th day of September in the year of our Lord, One Thousand Nine Hundred and Twenty-five, before me, the subscriber, a A FOREIGN Commissioner of Deeds for New Jersey in New York, personally appeared EDWARD D. NEWMAN, who I am satisfied is one of the parties mentioned in the foregoing instrument, to whom I first made known the contents thereof and thereupon he duly acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

ROBERT K. THISTLE,  
A Foreign Commissioner of Deeds  
for New Jersey in New York.

STATE OF <sup>N.Y.</sup> }  
COUNTY OF <sup>N.Y.</sup> }<sup>ss</sup>:

BE IT REMEMBERED, that on this 30th day of September in the year of our Lord, One Thousand Nine Hundred and Twenty-five, before me, the subscriber, a A Foreign Commissioner of Deeds for New Jersey in New York, personally appeared JEANETTE KAPLAN and made proof to my satisfaction that she is the Secretary of the Ritz Realty Corporation, the corporation named in the foregoing instrument; that she well knows the corporate seal of the said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that the seal was so affixed and the said instrument signed and delivered by M<sup>r</sup>. Mehr, who was at the date thereof the president of said corporation,

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*Bill of Complaint—Schedule C.*

in the presence of this deponent and that said president at the same time acknowledged that he signed, sealed and delivered the same as his voluntary act and deed and as the voluntary act and deed of said corporation, and that deponent  
 10 instrument as an attesting witness to the execution thereof.

JEANETTE KAPLAN.

Sworn and subscribed before me at New York, N. Y., the date aforesaid.

ROBERT K. THISTLE,  
 A Foreign Commissioner of Deeds  
 for New Jersey in New York

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**Schedule C.**

September 25, 1925.

Eypper & Beckmann, Inc.,  
 Palisade Junction,  
 Palisade, New Jersey.

Dear Sirs:

30 Confirming the conversation had with your Mr. Beckmann today, I herewith advise you that we shall be ready to close the title to the premises in the Township of Teaneck, in the County of Bergen, State of New Jersey, the first tract of which is on the Teaneck Public Road, which said premises are under contract for sale by you to me under contract dated August 5th, 1925, on October 2nd, 1925, at 2 P. M. and that in accordance with the understanding had by me  
 40 with your Mr. Beckmann, today, that the title

*Bill of Complaint—Schedule D.*

is to be closed at the time aforesaid at the office of the People's Trust & Guaranty Company of Hackensack, Hackensack, New Jersey.

Title will be taken by the Ritz Realty Corporation, a New Jersey Corporation, to whom the contract of sale above mentioned was assigned, and who will execute the purchase money mortgage as called for by the contract. 10

Very truly yours,

(Signed) EDWARD D. NEWMAN.

EDN:JK

**Schedule D.**

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October 7th, 1925.

Eypper & Beckmann, Inc.,  
 Palisade Junction,  
 Palisade, New Jersey.

Dear Sirs:

This is to advise you that we shall be ready again to close the title to the premises in the Township of Teaneck, in the County of Bergen, State of New Jersey, consisting of approximately  
 30 twenty-seven acres, and the first tract of which is on the Teaneck Public Road, which you contracted to sell to Edward D. Newman, under contract dated August 5th, 1925, on October 14th, 1925, at your office at 3 P. M.

This contract was assigned to us by Edward D. Newman, and we shall be ready at the time and place aforesaid to comply with all the terms of the contract, and to execute the purchase

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*Bill of Complaint—Schedule D.*

money mortgage and other instruments called for by the said contract.

Very truly yours,

RITZ REALTY CORPORATION,  
(Signed) By M. Mehr,  
President.

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A true copy,

THOMAS BARBER,  
Clerk.

59/314.

In Chancery of New Jersey, Ritz Realty Corporation, complainant, vs. Eypper & Beckmann, Incorporated, defendants.

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BILL OF COMPLAINT  
Mackay & Mackay, Solicitors for Complainant, Hackensack, N. J. Filed October 29, 1925.

30

40

*Answer.*

**ANSWER.**

IN CHANCERY OF NEW JERSEY.

RITZ REALTY CORPORATION,  
*Complainant,*  
*vs.*  
EYPPER & BECKMANN, INCORPORATED,  
*Defendants.*

*On Bill, etc.*

*Answer.*

10

The defendants, Eypper & Beckmann, Inc., answering the complaint herein, say that:

1. Paragraph 1 is denied except that the defendant admits that a paper purporting to be a contract and containing conditions set out in paragraph 1 of the complainant's bill, was signed by one Wm. J. Eypper, president.

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2. Paragraph 2 is denied except that defendant admits that three thousand (\$3,000) dollars was received by it, which sum was offered to be returned to the said Edward D. Newman.

3. Paragraph 3 is denied except that the defendant admits all the statements therein contained in the alleged contract.

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4. This defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 and therefore denies same.

5. As to paragraph 5, this defendant admits it received a communication from the complainant, marked Schedule C, and that this defendant informed complainant that it would not carry out the alleged contract.

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*Answer.*

6. As to paragraph 5, this defendant has no knowledge or information sufficient to form a belief, and therefore denies same.

7. As to paragraph 6, this defendant admits it received a communication from the complainant marked Schedule D.

8. Paragraph 7 is denied.

9. Defendant admits that the complainant is desirous of obtaining a conveyance to the lands and premises described in the bill of complaint herein but denies all the other allegations in said eighth paragraph.

For a further and separate defense, this defendant says:

1. That the defendant herein is a corporation duly organized and existing under the laws of the State of New Jersey and that William J. Eypper is its duly elected President and as such is authorized to act in behalf of the corporation according to the authority delegated to him by the Board of Directors of said corporation. That the said William J. Eypper as President had no authority given to him on the 5th day of August, 1925, or at any time prior thereto, to execute in behalf of the defendant corporation the alleged contract described in the bill of complaint and marked Schedule A and that this defendant says that the said alleged Agreement signed by the said William J. Eypper was not authorized by the said Board of Directors, and is, therefore, null and void and not binding upon this defendant.

*Answer.*

For a further and separate second defense, this defendant says:

1. That on or about August 5, 1925, one Edward D. Newman, through his agent, represented to William J. Eypper, who was at that time the President of the defendant corporation, that he had arranged with the other stockholders and directors of the defendant corporation whereby the property set out in the complaint herein was to be sold by the defendant corporation to the said Edward D. Newman, for the sum of thirty-five thousand three hundred and seventy-two (\$35,372.00) dollars, upon terms and conditions more fully described in Schedule A annexed to the complaint. That the said William J. Eypper relied upon the statements made by the said Edward D. Newman through his agent and executed a paper purporting to be a contract of sale in behalf of the defendant and signed his name as President thereto. That the said instrument was not acknowledged for the reason that no resolution was passed by defendant corporation herein or by its Board of Directors giving the authority to the said William J. Eypper to execute the agreement. That after the execution of the alleged contract, the said William J. Eypper consulted the other stockholders and directors of defendant corporation and was informed that no such arrangement was made with the said Edward D. Newman and thereupon the defendant repudiated the act of its President and so informed the complainant herein and Edward D. Newman.

*Answer.*

For a further and separate third defense, this defendant says:

10 1. That at no time did this defendant have any dealings or transactions regarding the premises described in the complaint herein with this complainant and by reason thereof this defendant will resist specific performance prayed for by complainant.

Solicitor for Defendant.

Of Counsel.

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*Order to Amend Answer.*

**ORDER TO AMEND ANSWER.**

Filed October 21, 1926.

IN CHANCERY OF NEW JERSEY.

RITZ REALTY CORPORATION,  
Complainant,  
vs.  
EYPPER & BECKMANN, INCORPORATED,  
Defendants.

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*On Bill, etc.  
Order to  
Amend, &c.*

This matter coming on to be heard in the presence of Mackay & Mackay, solicitors for complainant; David N. Popik, solicitor for defendant, and Simon M. Seley, of counsel, and upon a motion in open court to amend the answer by Simon M. Seley, in behalf of the defendant, Eypper & Beckmann, Incorporated;

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It is on this 19th day of October, 1926, ORDERED that the defendant be permitted to file the annexed amended answer in this cause with a copy of same to be served upon Messrs. Mackay & Mackay, solicitors for complainant, within twenty days from the date hereof.

30

E. R. WALKER,  
C.

Respectfully advised,

VIVIAN M. LEWIS,  
V.-C.

40

*Amended Answer.*

#2.

**AMENDED ANSWER.**

IN CHANCERY OF NEW JERSEY.

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RITZ REALTY CORPORATION, <i>Complainant,</i>  <i>vs.</i> EYPPER & BECKMANN, INCORPORATED, <i>Defendants.</i>	}	<i>On Bill, etc.</i>  <i>Amended Answer.</i>
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*On Bill, etc.*

*Amended Answer.*

*Defendants.*

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The defendants, Eypper & Beckmann, Inc., answering the complaint herein, say that:

1. Paragraph 1 is denied except that the defendant admits that a paper purporting to be a contract and containing condition set out in paragraph one of the complainant's bill, was signed by one Wm. J. Eypper, Pres't.

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2. Paragraph 2 is denied except that defendant admits that three thousand (\$3,000) dollars was received by it, which sum was offered to be returned to the said Edward D. Newman.

3. Paragraph 3 is denied except that the defendant admits all the statements therein contained in the alleged contract.

4. This defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 and therefore denies same.

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5. As to paragraph 5, this defendant admits it received a communication from the complain-

*Amended Answer.*

ant, marked Schedule C, and that this defendant informed complainant that it would not carry out the alleged contract.

6. As to paragraph 5, this defendant has no knowledge or information sufficient to form a belief and therefore denies same.

10

#3.

7. As to paragraph 6, this defendant admits it received a communication from the complainant marked Schedule D.

8. Paragraph 7 is denied.

9. Defendant admits that the complainant is desirous of obtaining a conveyance to the lands and premises described in the bill of complaint herein but denies all the other allegations in said eighth paragraph.

20

For a further and separate defense, this defendant says:

1. That the defendant herein is a corporation duly organized and existing under the laws of the State of New Jersey and that William J. Eypper is its duly elected President and as such is authorized to act in behalf of the corporation according to the authority delegated to him by the Board of Directors of said corporation. That the said William J. Eypper as President had no authority given to him on the 5th day of August, 1925, or at any time prior thereto, to execute in behalf of the defendant corporation the alleged contract described in the bill of complaint and marked Schedule A, and that this defendant says that the said alleged Agreement signed by the said William J. Eypper was not

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*Amended Answer.*

authorized by the said Board of Directors, and is, therefore, null and void and not binding upon this defendant.

For a further and separate second defense, this defendant says:

10 1. That on or about August 5, 1925, one Edward D. Newman, through his agent, represented to William J. Eypper, who was at that time the President of the defendant corporation, that he had arranged with the other stockholders and directors of the defendant corporation whereby the property set out in the complaint

#4.

20 herein was to be sold by the defendant corporation to the said Edward D. Newman, for the sum of thirty-five thousand three hundred and seventy-two (\$35,372) dollars, upon terms and conditions more fully described in Schedule A annexed to the complaint. That the said William J. Eypper relied upon the statements made by the said Edward D. Newman through his agent and executed a paper purporting to be a contract of sale in behalf of the defendant and signed his name as President thereto. That the said instrument was not acknowledged for the reason  
30 that no resolution was passed by defendant corporation herein or by its Board of Directors giving the authority to the said William J. Eypper to execute the agreement. That after the execution of the alleged contract, the said William J. Eypper consulted the other stockholders and directors of defendant corporation and was informed that no such arrangement was made with the said Edward D. Newman and thereupon the  
40 defendant repudiated the act of its President

*Amended Answer.*

and so informed the complainant herein and Edward D. Newman.

For a further and separate third defense, this defendant says:

1. That at no time did this defendant have  
10 any dealings or transactions regarding the premises described in the complaint herein with this complainant and by reason thereof this defendant will resist specific performance prayed for by complainant.

For a further and separate fourth defense, this defendant says:

1. That the alleged Agreement provided in  
20 substance that Edward D. Newman, the party of the second part therein mentioned, would assume a mortgage of \$17,000 then a lien on said #5.

premises. That at no time did the said Edward D. Newman offer to assume said mortgage of \$17,000.00 and that by reason thereof complainant is not entitled to the prayer for specific performance.

DAVID N. POPIK,  
Solicitor for Defendant. 30

SIMON M. SELEY,  
Of Counsel.

Edward A. Newman, direct.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10	RITZ REALTY CORPORATION, <i>Complainant,</i>  <i>vs.</i> EYPPER & BECKMANN, INCORPORATED,  <i>Defendants.</i>	}	<i>On Bill, &amp;c.</i>  <i>Testimony.</i>
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Paterson, N. J., September 8, 1926.

Before Hon. Vivian M. Lewis, Vice-Chancellor.

20 Appearances:

Howard Mackay, Esquire, appearing for Messrs. Mackay & Mackay, solicitors of complainant.

David N. Popik, Esquire, solicitor of defendant.

Simon M. Seley, Esquire, counsel of defendant.

30 EDWARD D. NEWMAN, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

*Direct examination* by Mr. Mackay.

Q Where do you live, Mr. Newman? A I live at 895 West End avenue, New York City.

Q What is your business? A I am a lawyer.

Q Do you know the corporation of Eypper & Beckmann? A Yes, sir.

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Edward A. Newman, direct.

Q Did you ever have any business dealings with them? A I did.

Q When? A On August 5, 1925.

Q What dealings did you have? A I purchased twenty-seven acres of land in Teaneck, Bergen County, New Jersey, from the Eypper & Beckmann Company. 10

Q Under a contract? A Under a contract in writing, we did.

Mr. Mackay: I offer the contract in evidence.

Mr. Seley: I object to the offer, because it does not appear that it was acknowledged by the secretary and treasurer.

The Court: I will overrule the objection. 20

Q Is that your signature? A Yes, sir.

Q And is that Mr. Eypper's signature? A Yes, sir.

Q Did you see Mr. Eypper sign it? A Yes, sir.

Q What else did you see him do? A Affix the seal of the corporation to it.

The Court: Is there a witness to it? 30

The Witness: No; no witness.

Mr. Mackay: I offer the contract in evidence.

Mr. Seley: I object to it.

The Court: I will allow it, upon noting your objection.

Contract marked Exhibit C. 1 as of this date.

Mr. Mackay: I would like to offer in evidence a certified copy of the certificate of 40

*Edward A. Newman, direct.*

incorporation of Eypper & Beckmann, Incorporated.

The Court: It will be received.

Certificate marked Exhibit C. 2 as of this date.

10 Mr. Mackay: I would also like to offer in evidence a certified copy of the certificate of incorporation of the Ritz Realty Corporation.

The Court: Received.

Certificate marked Exhibit C. 3 as of this date.

20 Q After the execution of Exhibit C. 1, what did you do, if anything, with reference to that contract? A About three weeks after I signed this contract, Mr. Eypper called me on the telephone and wanted to know whether I wanted to sell the property, and I asked him why, and he said he could get me seventeen hundred dollars an acre for the property, so I told him: "No; I don't want to sell the property; I don't know what I want to do with it, but I want to take title to it first before I do anything," and I asked him what title company examined the property before, and he told me the Peoples Trust and Mortgage Guaranty Company of Hackensack, and I told him I wanted to insure the title, and I ordered that company to examine the title for me, and when they were about finished with the examination of title, about September 25th, I called up Eypper & Beckmann Company on the telephone, and Mr. Beckmann got on the 'phone—

30 Q Do you know Mr. Beckmann? A I know Mr. Beckmann.

40 Q Have you seen him? A Yes.

*Edward A. Newman, direct.*

Q Have you talked with him? A Yes.

Q Did you recognize his voice? A I did recognize his voice; yes.

Q Did you know you were talking to Mr. Beckmann? A He said I was talking to Mr. Beckmann, and I knew it was Mr. Beckmann.

10

Mr. Seley: May I cross examine Mr. Newman on that point?

The Court: You may object.

Mr. Seley: I want to show that he didn't know it was Mr. Beckmann that he was talking to.

The Court: All right, if you can do that.

*By Mr. Seley.*

20 Q How many times did you meet Mr. Beckmann? A I met him once.

Q Only once, and that was before September 25th? A No; that was on October 14th.

Q So on September 23rd, you didn't know Mr. Beckmann? A No.

Q And didn't know his voice at that time? A No.

30 Mr. Seley: Then I object to any conversation over the telephone with Mr. Beckmann, if he didn't know his voice.

The Court: Didn't you know his voice on September 23rd?

The Witness: Yes; after having spoken to him on October 14th, and October 1st, or September 30th, I knew it was the same man I talked to on September 23rd.

The Court: I will allow it.

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*Edward A. Newman, direct.*

*By Mr. Mackay.*

Q What did he say? A I said that we wanted to close title on October 5th, on five days' notice, and I told him I was ready to close the title, and it was to be at the Peoples Trust and Mortgage Guaranty Company of Hackensack, and I asked him if he was willing to close the title at the office of the People Trust Company, instead of his office, and he said: "Yes," and I said I would be ready on October 2nd, and I said I would write him a letter, because the contract provided a five days' notice, and he should reply to it.

Mr. Mackay: Have you that letter?

Mr. Seley: Yes.

Mr. Mackay: Will you let me have it?  
(Mr. Seley produces letter.)

Q Is that the letter you refer to? (Showing witness letter.) A Yes; this is the letter.

Mr. Mackay: I offer the letter in evidence.

The Court: Admitted.

Letter marked Exhibit C. 4, as of this date.

Q Now, after writing Exhibit C. 4, did you get a reply to it? A I didn't get a reply, but it was on September 30th, or October 1st, I again called up Eypper & Beckmann, and Mr. Beckmann got on the 'phone, and I said that I didn't get a reply to my letter of September 25th, and he said: "Didn't you get a letter from our lawyer?" and I said: "No", and I said: "What is the matter?", and he said: "I cannot tell you; you will hear from my lawyer."

*Edward A. Newman, direct.*

Q Did you hear from his lawyer? A I did.

Q Did he say who his lawyer was? A No; he didn't.

Q Did you subsequently hear from the lawyer? A I did.

Q Is this the letter you received? (Showing witness letter.) A Yes; this is the letter I received.

Mr. Mackay: I offer the letter in evidence.

The Court: Let it be marked.

Letter marked Exhibit C. 5, as of this date.

Q After receiving this letter, which is now Exhibit C. 5, what did you do? A On October second we were present at the office of the Peoples Trust and Mortgage Guaranty Company of Hackensack, in accordance with my letter of September 25th, that we would be ready to close title on that date, and Mr. Mahr, of the Ritz Realty Company was there, and also the secretary of the company, but nobody showed up.

The Court: And you were unable to close?

The Witness: We were unable to close, so on October 5th, I think it was, I wrote another letter.

Mr. Mackay: Have you that letter?

Mr. Seley: Yes, sir.

Q Who did you write the letter to? A A letter to Eypper & Beckmann Company, stating that we would be ready to close—the Ritz Realty Company would be ready to close—

*Edward A. Newman, direct.*

Mr. Seley: That is unnecessary; we have the letter here.

The Court: Have you the letter there?

Mr. Seley: Yes.

10 The Court: Then you may as well get out all the letters. What was the nature of the letters?

Mr. Mackay: One is a repudiation to close and returning the three thousand dollars, and the others to fix a time and place to close.

The Court: Any other letter repudiating?

Mr. Mackay: No.

The Witness: They returned their check for three thousand dollars.

20 Mr. Mackay: I now offer these three letters in evidence.

Letters marked Exhibit C. 6, Exhibit C. 7 and Exhibit C. 8, as of this date.

Q After writing the letter, Exhibit C. 6, did you appear at the office of Eypper & Beckmann, on October 14th? A Yes, sir.

30 Q Who was there? A The president of the Ritz Realty Corporation, and the secretary of the Ritz Realty Corporation, and the representative of the Peoples Trust and Mortgage Guaranty Company, and myself and my brother.

Q Who did you see there? A Mr. Beckmann, and I told Mr. Beckmann that the Realty Company was ready to close the contract.

Mr. Seley: Any conversation with the Ritz Realty Corporation I think is immaterial at this time, because no assignment has been offered at this time.

40 Mr. Mackay: I will now offer it.

*Edward A. Newman, cross.*

Assignment of contract is marked Exhibit C. 9, as of this date.

The Court: The first check was cashed?

Mr. Seley: Yes.

10 Q When you signed the contract, how was the first deposit of three thousand dollars paid? A My brother gave a check on August 3rd, for five hundred dollars, and then I gave my check for twenty-five hundred dollars on August 5th, when the contract was signed.

Q Are those the checks you refer to? A Yes.

Mr. Mackay: I offer the checks in evidence.

20 Checks marked Exhibit C. 10 and Exhibit C. 11, as of this date.

Q So that on October 14th, when you appeared, the title wasn't closed? A No; Mr. Beckmann said they would not close title, and that he understands I am there to make a formal tender, and I wanted to discuss the matter with him, but he refused to discuss it.

30 Mr. Mackay: That is all.

*Cross examination by Mr. Seley.*

Q When was the first time that you saw the property, Mr. Newman? A The first time I saw the property was the latter part of August.

Q The latter part of August? A Yes, sir.

Q That was subsequent to the time the agreement was made? A Yes, sir.

40 Q Did you inspect the property at all before you had the agreement? A No, sir.

*Edward A. Newman, cross.*

Q Did you meet either Mr. Eypper or Mr. Beckmann, prior to August 5th, regarding negotiations of this property? A No, sir.

Q So you didn't meet anybody until you had this information from whom? A I had this information from my brothers.

10 Q Your brothers? A And Doctor Limenfeld spoke to me about it.

Q Have you known Doctor Limenfeld for some time? A About two years.

Q And he is a dentist? A Yes, sir.

Q And he has an office where? A In Palisade Junction.

Q And where is the office of Eypper & Beckmann? A Palisade Junction.

Q And Doctor Limenfeld is the one who described this property to you? A Yes, sir.

20 Q And he told you the probable value of this property? A Yes, sir.

Q And its taxation value? A Yes, sir.

Q And he wanted to have an interest with you? A No, sir.

Q In what way was he interested in the property? A Just as a broker.

Q Did he tell you that he knew Mr. Beckman quite well? A Yes, sir.

30 Q And had he done business with Mr. Beckmann before? A That, I don't know.

Q And then you had a conversation with Mr. Eypper and this contract was executed? A Yes, sir.

Q Now, the first check was for five hundred dollars, was it not? A Yes, sir.

Q To whom was it delivered? A To Doctor Limenfeld, as a binder.

40 Q And you don't know when Doctor Limenfeld gave it to Mr. Eypper? A Only what he told me.

*Edward A. Newman, cross.*

Q And the check was dated October 3rd? A Yes, sir.

Q And it was delivered on August 5th? A That I don't know.

The Court: It shows the transaction.

10 Q It shows the date? A Yes; it shows the date.

Q Now, the second check of twenty-five hundred dollars was made by you? A Yes, sir.

Q And it was made in the office of Eypper & Beckmann? A No; it was made over in my office, and to my order, and I had it certified and I endorsed it over.

Q Was Eypper present when the agreement was signed? A Yes, sir.

20 Q Who else was there at the time? A My brother Stanley and Limenfeld.

Q Was anything said by Mr. Eypper at the time, that he was signing this agreement without consulting his partner, Mr. Beckmann? A No, sir; not a word.

Q Did you, as an attorney, ask him to have the agreement acknowledged? A No.

Q Did you think it essential to have it acknowledged? A No.

30 Q Now, this corporation that you speak of, the Ritz Realty Corporation; who incorporated that? A The United States Corporation.

Q That is a corporation that does business with many lawyers? A Yes, sir.

Q You asked them to organize it? A Yes, sir.

Q Who are the stockholders of the corporation? A Mr. Mahr—

40 Q Who is Mr. Mahr? A He is a real estate man.

*Edward A. Newman, cross.*

Q Who has the other stock in the company?

A One share each by the secretary and somebody else.

Q Have you any stock in the company? A No.

10 Q You are not interested in the company whatever? A No.

Q None whatever? A No.

Q Are your brothers interested in the company? A No.

Q This company is positively an outside company and has nothing to do with you?

Mr. Mackay: I don't see how this is material.

The Court: Neither do I.

20 Mr. Seley: The relationship between Mr. Newman and this company.

Q Wasn't this company or corporation formed just for the purpose of transferring this contract to?

Mr. Mackay: I object to the question.

The Court: I will allow that.

30 A Yes; it was formed to take over this property.

Q It was organized for that purpose? A Yes.

Q And you transferred it when? A I transferred it in September.

Q In September? A Yes.

Q September 23rd? A Yes.

40 Q And you had it acknowledged September 30th? A Yes; I had it acknowledged September 30th after Mr. Beckmann told me he was not going through with the transaction.

*Edward A. Newman, cross.*

Q In other words, you had this assignment made on the twenty-third, and you had this conversation with Mr. Beckmann on September 24th, and you wrote the letter on September 25th, and you had it acknowledged on September 30th; is that right? A Yes; it is acknowledged by me only. 10

Q Now, the money in this company was put in by whom? A Mr. Mahr.

Q And it was put in for the purpose of taking over the property? A Yes.

Q And you have no interest in this company? A I have no interest.

Q None at all? A No.

Q Now, in regard to the conversation of September 24th, you say Mr. Beckmann was very affable and agreeable to the closing of the title? 20 A Yes.

Q And four or five days afterwards he changed his attitude? A Yes.

Q Didn't he say on September 24th, that he had repudiated this agreement right along? A No, sir.

Q Didn't he say on September 24th, that he had spoken to Mr. Limenfeld, and that he repudiated the contract right along? A No, sir; on September 30th, he refused to say anything about it; he refused to say why he repudiated the contract. 30

Q I mean on September 23rd? A No.

Q And wasn't the letter written on September 25th, for the purpose of making a record? A No; I spoke to him on September 24th, and I said I was going to write and confirm the offer to close the agreement, and it would be at the Peoples Trust and Mortgage Guaranty Company, instead of their office. I had to give a 40

*Edward A. Newman, cross.*

notice five days before, and I wrote that to give them the notice.

Q And your assignment to the corporation was to that effect? A Yes; because I wrote him that the title would be taken in the name of the Ritz Realty Corporation.

10 Q Now, that was the letter of September 25th? A Yes.

Q Did you see Mr. Beckmann subsequent to that time? A I saw Mr. Beckmann on October 14th.

Q Where did you see him? A At his office.

Q Who was there with you? A Mr. Mahr, the president of the Ritz Realty Corporation, and the secretary of the Ritz Realty Corporation, and my brother Stanley, and Mr. Powers, of the Peoples Trust and Mortgage Guaranty Company.

Q Did you have a bond and mortgage drawn, pursuant to the agreement? A No; I told him we were ready to sign the bond and mortgage.

Q Was there a purchase money bond and mortgage offered? A No, but I told him we were ready to execute them.

Q Was there a signed bond and mortgage ready to be tendered at that time? A No; there is a specific agreement put in the contract at my request.

Q Will you point it out to me please? A Yes; let me see the contract.

Q Will you point it out? A Yes; I will point it out.

Q Where is it? A "Said mortgage may be executed by said party of the second part, or his assigns."

Q That is the purchase money mortgage? A That is the purchase money mortgage.

40

*Edward A. Newman, cross.*

*By the Court.*

Q Why didn't you have all these papers ready to pass at the time? A In New York it is customary for the attorney of the seller to draw the bond and mortgage and the buyer pays for it.

Q And you assumed they would be ready? A I assumed they would be ready. Of course, I could draw them.

*By Mr. Seley.*

Q You took charge of the drawing of this agreement yourself, didn't you? A The agreement was practically all drawn when I got there.

Q But you went over it very carefully? A I went over it very carefully.

Q Did you make an offer of cash or certified check to Mr. Beckmann? A When?

Q At the time you went to close title? A Yes; I had a certified check of nine thousand dollars.

Q Have you got the check with you? A Yes; here is a certified check dated October 2nd; that is the original date.

Q Where is the check that you offered at the closing of the title? A This check here.

Q Nine thousand dollars, October 14th; all right. There was a first mortgage of seventeen thousand dollars, wasn't there? A Yes.

Q Did you offer Mr. Eypper & Beckmann, at the time of the closing of the title, that you would assume payment of the seventeen thousand dollars? A I offered to go through with the contract in every respect.

Q Did you personally offer to assume the payment of the seventeen thousand dollars, pursuant

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*Edward A. Newman, cross.*

to the contract? A I offered to close the title, pursuant to the contract.

Q Did you tell him you were ready to assume payment of the seventeen thousand dollars mortgage? A I told him I was ready to go through with the contract.

10 Q Did you offer to assume the payment of the seventeen thousand dollar mortgage?

Mr. Mackay: I object to the question; he has asked that question there or four times and the witness has answered it.

The Court: I will allow it; he is asking him if he personally agreed to assume it.

Mr. Seley: Here is a skeleton of a corporation with an authorized capital stock of fifteen thousand dollars, and a paid-in capital of twelve thousand dollars. There is a mortgage of seventeen thousand dollars—

20

The Witness: I told Mr. Beckmann—

Q I ask this question, and I want an answer to it. Did you personally agree to assume the seventeen thousand dollar mortgage; yes or no? A I will say yes, because I was there and I was ready, and the Ritz Realty Corporation was ready.

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*By the Court.*

Q Were you ready?

Mr. Mackay: I object, because that is not a reason set forth in the answer. There is no such defense interposed, and so at this minute—

The Court: I will allow it, and if there is a new defense he can amend his answer.

40

*Edward A. Newman, cross.*

*By Mr. Seley.*

Q Did you expressly agree to assume the payment of the mortgage? A I did not, in express words.

Q Do you know whether Doctor Limenfeld has any interest in this corporation? A He has no interest in the corporation. 10

Q Do you know whether he received any compensation for bringing about this sale? A He received compensation from Eypper & Beckmann.

Q Was that the only compensation? A I know there was no compensation received from the Ritz Realty Corporation.

Q Was he promised any? A No, sir; he was not. 20

Mr. Seley: That is all.

*By Mr. Mackay.*

Q Do you know whether he received any compensation from Eypper & Beckmann? A Yes, sir.

Q Were you present when it was paid? A Yes; he got the five hundred dollars, and Mr. Eypper said he would pay the balance when the balance was paid. 30

Mr. Mackay: That is all. I would like to offer in evidence the check.

The Court: This is the check for nine thousand dollars, certified and never used?

Mr. Mackay: Yes, sir.

The Court: All right.

Check marked Exhibit C. 12, as of this date.

COMPLAINANT RESTS.

40

*William J. Eypper, direct.*

WILLIAM J. EYPPER, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

*Direct examination by Mr. Seley.*

10 The Court: Where do you live, Mr. Eypper?

The Witness: At Palisade, New Jersey.

Q You are the president of the Eypper & Beckmann Realty Company? A Yes, sir.

Q And you were such president during the month of September, 1925? A Yes, sir.

Q Do you know Mr. Newman, who testified before? A Yes, sir.

20 Q When was the first you met him? A On August 5th.

Q 1925? A 1925.

Q Where? A At our office.

Q Before you met Mr. Newman, did anybody else speak to you about this property? A Yes; a man by the name of Limenfeld.

Q How long had you known Mr. Limenfeld? A I had seen him and met him perhaps a half a dozen times in six months before that.

30 Q Did you ever have any dealings with him? A Yes.

Q And did your partner, Mr. Beckmann, have any relations with him? A Yes.

Q Tell us the relationship. A This Mr. Limenfeld and Mr. Beckmann were friends, and they called each other by their first names, and he called Mr. Beckmann "George," and I know they met socially.

40 Q Do you remember of any transaction between them? A Yes; he had bought a piece of

*William J. Eypper, direct.*

property and paid a deposit of fifty dollars on it, and then he made another payment—

Mr. Mackay: I object to this.

Q When did Doctor Limenfeld call at your office with reference to this property? A I saw 10 him Monday, August 3rd.

Q Where was Mr. Beckmann at that time? A He had gone to Canada on Saturday.

Q The Saturday previous, which was August 1st? A Yes, sir.

Q Do you know whether he had any conversation with Doctor Limenfeld, in a general way? A In a general way, I know he did.

The Court: Did you hear the conversation? 20

The Witness: No.

Q Do you know whether he was in contact with Limenfeld with reference to this property, prior to August 1st; did you see them together prior to August 1, 1925? A Yes.

Q A short time prior? A Yes.

Q How many days before? A Possibly a 30 week.

Q Your corporation consists of how many members? A Mr. Beckmann and his wife, and myself and my wife.

Q Who is the president? A I am the president.

Q Who is the treasurer and secretary? A Mr. Beckmann.

Q Who had charge of selling property in your office? A Mr. Beckmann entirely.

Q What were your duties? A Financial 40 matters, procuring mortgages, &c.

*William J. Eypper, direct.*

Mr. Mackay: I don't like to object, but I think counsel is very leading.

The Court: These are all leading questions, I think.

Mr. Seley: We want to show the relationship.

10 The Court: You have shown that Mr. Beckmann had charge of the real estate transactions, by your own witness.

Q What was the conversation that you had with Mr. Limenfeld, when he called at your office on August 3rd?

Mr. Mackay: I object to that.

20 The Court: I will allow that.

A He said he saw five hundred dollars paid to him.

Q What was the conversation that you had with Limenfeld? A He called at my office and he said: "Mr. Eypper, I have here a check for five hundred dollars I want to pay you on that property at Teaneck," and I said: "Is that so; at what price?" and he said "Thirteen hundred dollars an acre," and I said I thought sixteen hundred dollars an acre was the lowest price I had ever heard on that, and he said that George told me if he could get thirteen hundred dollars he would be satisfied with it, and he would take that on a two and a half per cent. deduction.

*By the Court.*

Q How much money did you put in Eypper & Beckmann? A When we opened?

40 Q Yes. A About fifteen hundred dollars.

*William J. Eypper, direct.*

Q And how about Beckmann? A The same.

Q And how about your wives, or are they dummies? A They are dummies.

Q And so you and Beckmann control it? A Yes.

Q And that is the corporation? A Yes. 10

*By Mr. Seley.*

Q Go ahead. A I told Mr. Limenfeld that I wouldn't go through with it on any such terms, and I didn't believe Mr. Beckmann had told him anything like that, and he said Yes; George had told him if he could get thirteen hundred dollars an acre, then two and a half per cent., and if he got sixteen hundred dollars, then it was five per cent. 20

The Court: Why didn't you want to go through with it?

The Witness: Because, I thought Limenfeld waited until Mr. Beckmann was out of reach.

Q Was that the reason, because you didn't think the price was high enough? A Yes; I thought we ought to get the price I had heard Mr. Beckmann mention, which was sixteen hundred dollars. 30

Q And you weren't satisfied? A I was doubtful about Mr. Limenfeld's story.

Q That was afterwards; you knew about the three thousand dollar check? A Yes.

Q And the reason was you didn't think the price was the proper amount for your property? A Yes.

Q That was on August 3rd? A Yes. 40

*William J. Eypper, direct.*

Q Did you tell Limenfeld that Beckmann was away? A Yes.

Q And did you know Beckmann's address when he was away? A He left an address.

10 Q What did you tell Limenfeld? A I told him I was going to confirm his story and I was going to wire him and see if the price was the same as Beckmann had given him.

Q That was on August 3rd? A Yes.

Q Did you send this telegram on August 3rd? A Yes, sir.

Q And did you ask him in that telegram if he had quoted the price of thirteen hundred dollars?

20 Mr. Mackay: Now, I object to that; he is reading from the telegram.

The Court: He sent that telegram, he said.

Mr. Seley: I would like to have the telegram marked for identification.

Telegram marked Exhibit D. 1, for identification, as of this date.

Q Did you ask Limenfeld to wait some time?

30 A Yes; I asked him to wait until we heard from Beckmann.

Q And until when did you wait? A I don't know; I think Limenfeld came in the same day and protested about the embarrassment it would cause him and the Newmans if he didn't go through with it, and he had a check from Newman for five hundred dollars.

40 Q Did you get in touch with the telegraph company about this telegram that you sent to Mr. Beckmann?

*William J. Eypper, direct.*

Mr. Mackay: I object to that.

The Court: I want to get this conversation out, and I can strike it out after, if it is not relevant.

A We had no answer to the telegram, and I had the stenographer communicate with the telegraph company, and they replied that they couldn't locate Mr. Beckmann and they had returned the telegram. 10

Q And did you communicate that to Mr. Limenfeld? A Yes.

Q When was that? A About the third or fourth of August.

Q Did you tell that to Mr. Limenfeld? A Yes, sir.

20 Q What did he say? A He said it was an embarrassment for him, and then I said I would accept the five hundred dollar check, but with the understanding that if any word came from Mr. Beckmann, if they could deliver the telegram, then the offer was off.

Q When was that contract made? A On the afternoon of August 5th, Limenfeld came in with Newman.

30 Q What time did they come in? A Between four and five o'clock, or two and three o'clock; I don't know.

Q Was it in banking hours? A I believe it was.

Q Had the check been deposited then yet or not? A No; I think not. I don't think we deposited the check until the next day, or the same day.

40 Q Then after the agreement was drawn then you sent down the check for deposit? A That is right.

*William J. Eypper, direct.*

Q When was the contract consummated? A I think that was 2 or 3 o'clock in the afternoon.

Q It was after banking hours, wasn't it? A I think it was.

Q When did you deposit the other check? A I think it was the next day.

10 Q When the agreement was drawn, was there any conversation between you and Limenfeld about the deduction of two and a half per cent. on the purchase price? A Yes; Limenfeld wanted a commission of two and a half per cent. which amounted to about eight hundred dollars, and he made such a storm about it—that he needed it, and I finally gave him five hundred dollars.

20 Q Did he say anything about the commission? A Yes; he said he would allow him a commission of two and a half per cent. being there was no broker involved in the party.

Q Tell us the entire conversation that you had with Limenfeld in the presence of Newman. A Limenfeld asked for eight hundred and seventy-five dollars, being two and a half per cent. under the selling price of that property, and I refused to give it to him at first, and I finally compromised.

30 The Court: He asked for it?

The Witness: Yes.

The Court: And you gave him five hundred dollars?

The Witness: Yes; I understood that Limenfeld was—

The Court: You didn't give it to him as a present?

40 The Witness: No; he being associated with the Newmans in the purchase of it—I knew he was no broker.

*William J. Eypper, direct.*

Q Now, after this paper was signed—this agreement—what was said regarding an acknowledgment, if anything? A Why, Mr. Newman wanted to know if the secretary was present to attest it, and I said I was acting simply on my own responsibility, and because of Limenfeld's professed friendship with Beckmann; I knew I had no right to go through with it, but I believed Limenfeld was telling the truth and I had taken it up with nobody else, but I was signing it on my own responsibility entirely. 10

Q After signing the agreement did you receive this telegram of August 12, 1925, from Beckmann? A Yes.

The Court: What is that?

Mr. Seley: Telegram back from Beckman quoting the figure at \$1,600 per acre. I offer it in evidence. 20

Mr. Mackay: I object to it on the ground that it is not binding on the complainant.

The Court: I will allow it, if that is the only objection.

Telegram marked Exhibit D. 2 as of this date.

The Court: Where is the telegram from? 30

Mr. Seley: Ontario, Canada. He didn't receive the first telegram and we sent another one.

Q Now, after this was done, did you wait until Mr. Beckmann came back? A Yes.

Q When did Mr. Beckmann arrive? A Mr. Beckmann came back sometime after the 15th of the month.

Q And what did he do in your presence, if anything? A The first thing he did was ex- 40

*William J. Eypper, direct.*

press disgust with my signing a contract at thirteen hundred dollars an acre and he said he wouldn't go through with it.

Q Then what did he do? A He sent for Limenfeld.

10 Q Then did he come over? A Not right away, but a day or two afterwards.

Q Were you present when he had a conversation with him? A Yes.

Q What conversation did he have with him? A He asked him by what right he had to quote the price of thirteen hundred dollars an acre and he said he had never mentioned anything but sixteen hundred dollars, and then there was a bandying of words between them, about sixteen hundred and thirteen hundred, and then Limenfeld said: "My word is as good as yours, and you said thirteen hundred." 20

Q Was there anything about the sum of three thousand dollars mentioned at that time? A The sum of three thousand dollars was mentioned at that time.

Q Did he say he would return the three thousand dollars? A Yes.

Q Was anything said about the five hundred dollars you had given to him? A Some mention was made, but I don't remember about that. 30

Q You don't recall how Mr. Beckmann expressed himself about the five hundred dollars? A No; I don't.

Q Did you inform Beckmann that you had paid five hundred dollars to Limenfeld? A Yes; I let him know it.

Q He knew about it? A Yes; he knew about it.

Q But the way he expressed himself about this five hundred dollars you don't recall? A 40 No.

*William J. Eypper, direct.*

*By the Court.*

Q You didn't hear the conversation between Beckmann and Limenfeld? A Yes; I was present.

Q What did Beckmann say about the five hundred dollars? A I don't recall. 10

*By Mr. Seley.*

Q Why didn't you ask him to return it? A It didn't occur to me.

Q Did you hear Beckmann say what he would return to Newman?

Mr. Mackay: I object to the question; it is very leading.

Q Was anything said by Beckmann to Limenfeld regarding twenty-five hundred dollars in this transaction? 20

The Court: That is the same objection; objection sustained.

Q Now, finish the conversation, and tell us the conversation Beckmann had with Limenfeld. A Limenfeld said, "My word is as good as yours, and you are going through with this thing, and they are going to get this property and I am going to get mine." 30

Q Is that all that was said? A That is all I recall.

Q Don't you recall anything about money being said—about amounts of money and deposits and commissions at all; was that all that was said?

Mr. Mackay: I object to that. 40

*William J. Eypper, cross.*

The Court: This man is telling you all he knew about it, apparently.

Q Now, after this conversation between Limenfeld and Beckmann, when did you next see Limenfeld? A I didn't see him at all.

10 Q Were you instrumental at all about communicating with Limenfeld or Newman subsequent to the time Beckmann arrived? A No.

Q Mr. Beckmann took charge of it? A Yes.

Mr. Seley: That is all.

*Cross examination by Mr. Mackay.*

Q You mean to say you had nothing at all to do after that with repudiating this contract? A  
20 No; I don't mean that.

Q What do you mean? A I mean that I didn't sign or send any letters.

Q You signed the check, didn't you, for three thousand dollars? A No. It doesn't require two signatures.

Q Do you ever sign them? A Yes; I do.

Q Didn't you sign this check? A I don't know whether I signed it or Mr. Beckmann, but I think Mr. Beckmann.

30 Q Are you and Mr. Beckmann still in business? A We are.

Q Under the name of Eypper & Beckmann, Inc.? A Yes, sir.

Q And you knew Mr. Berkmann was going away about the 1st of August on this vacation? A Yes, sir.

Q And did you know he was going away for two weeks? A I suppose he must have told me.

Q And did he tell you where he was going?

40 A He left his address in the office.

*William J. Eypper, cross.*

Q And that is where you sent the telegram to? A It is.

Q And you say two days after Mr. Beckmann left on his vacation Mr. Limenfeld came and told you the property was sold for thirteen hundred dollars an acre, and you said you didn't know the property was for sale? A I told him  
10 that I didn't know the property was for sale at thirteen hundred dollars.

Q You took Limenfeld's word against your own partner? A No; that is not the way I would put it.

Q How would you put it? A I said I had never heard Mr. Beckmann quote that property for less than sixteen hundred dollars, and when Mr. Limenfeld came to me and said it was thirteen hundred dollars—  
20

Q You had no doubts then? A Yes, I did; because I sent the telegram.

Q Weren't you acquainted with the terms of the property? A No.

Q When did you purchase the property? A I think it was May.

Q It may have been July? A It may have been, but I don't remember.

Q And when Limenfeld came to you and told you he had a purchaser for thirteen hundred dollars, didn't you say you had a good chance to make a profit on your bargain? A No.  
30

Q Didn't you make a profit? A Yes.

Q And that is the reason you signed the contract, isn't it? A If there had been no profit I would not have signed the contract under any circumstances.

Q But you told Limenfeld you couldn't do anything with the property at thirteen hundred dollars an acre until you heard from Beckmann? A True.  
40

*William J. Eypper, cross.*

Q On what date? A I think it was August 3rd.

Q August 3rd; and how long did you wait for an answer? A A day or two, I believe.

10 Q And when did you learn from the telegraph office it couldn't be delivered? A I believe it was the following day.

Q It couldn't be delivered? A No.

Q What did you do then? A I didn't do anything; Limenfeld came in.

Q Then the following day Limenfeld and Newman came in? A No; Limenfeld came in several times before Newman came in.

Q Then finally the next day Mr. Limenfeld came in with Mr. Newman? A Yes; that was on the fifth of August.

20 Q Yes, and you had the contract drawn? A Newman insisted on it; I had it partially drawn.

Q Almost completed, wasn't it? A Yes.

Q And Mr. Newman made some alterations in it? A He made some changes and alterations, yes.

Q And you had some discussions about it? A Yes.

Q And he wanted some changes? A He wanted it changed in two particulars.

30 Q What were they? A The printed form is cash, and he had the words "or certified check" inserted, and he made some change about the purchase money mortgage.

Q Yes. A I didn't consider the changes he wanted of any importance, and I let him make them.

Q You agreed to them? A Yes; he wanted certified check or cash; he wanted that.

40 Q Did he have the certified check? A When?

*William J. Eypper, cross.*

Q On the fifth of August. A You are speaking of the final payment, which provided for a certified check.

Q No; you misunderstand me. I mean at the time the contract was signed and the balance of the deposit was made, did you insist on a certified check then from Mr. Newman? A I don't know whether I did or not, but he had one there. 10

Q And you took that check and endorsed it? A I may have endorsed it; I don't know. It was deposited in our account.

Q Who else deposited checks? A The stenographer could do it.

Q Under whose direction? A Under our direction.

Q And it was deposited in the account of Eypper & Beckmann, Inc., wasn't it? A It was. 20

Q And it stayed there until when? A I couldn't say; I think it was returned sometime in September.

Q When did you and Mr. Beckmann, in September, talk about drawing three thousand dollars and returning it to Mr. Newman? A I think our check will show that.

Q When did you discuss it? A We discussed it from the time he returned until he paid it. 30

Q You mean to say you were discussing drawing the check for three thousand dollars for a month? A Yes; we talked about the advisability of doing it.

Q Did you write any letters? A I didn't write any letters.

Q Did the corporation write any letters? A I presume so.

Q Do you know? A No; I don't. 40

*William J. Eypper, cross.*

Q Then why do you presume they did? A Because, I know there was a letter written.

Q Do you know who wrote the letter? A I think it was Mr. Beckmann.

Q But you don't know, do you? A No.

Q Wasn't it Mr. Popik, the attorney? A 10 Yes; it was Mr. Popik.

Q The attorney? A Yes.

Q No other letter besides that? A No.

Q That was the letter? A Yes; that was the letter.

Q And you and Mr. Beckmann was discussing for a month the return of the three thousand dollars? A Yes, and Mr. Beckmann called up Mr. Limenfeld and said he was going to return the three thousand dollars.

Q And isn't it a fact that since that time 20 the value of the property has increased? A Yes.

Q About how much, do you know? A Up to this time it is possibly double. No; up to the time we wrote the letter.

Q How much up to that time? A There had been no test at the time, and the increase had not been appreciated, and it was not because the property had increased in value that I wanted 30 to repudiate, as you put it, the contract, but it was because Limenfeld had represented to me that Beckmann had said he would sell if for thirteen hundred dollars, which was a deliberate falsehood.

Q Why did you sign the contract? A Because I was an easy mark and I accepted his story.

Q I thought you said on direct examination you were doubtful? A I was doubtful at first.

Q When you sent the telegram to Beckmann? 40 A Yes.

*William J. Eypper, cross.*

Q Was that the reason you wouldn't sign the contract? A What?

Q That you wanted to get Beckmann to O. K. the contract? A Yes.

Q And then you signed without hearing from Beckmann? A After two days, yes. 10

Q Then you had signed the contract before you heard from Beckmann? A A conditional receipt, yes.

Q And with that thought in your mind you didn't wait until you heard from Beckmann? A This Limenfeld hounded me so much and I told him not to talk so much, and he said he would talk, and he kept up so long that I finally did sign it.

Q You knew Limenfeld for quite a while? A 20 No.

Q You didn't? A I knew he was a dentist over at the junction.

Q You knew he was a great friend of Beckmann? A I knew he professed to be.

Q He was, wasn't he; didn't you know he was? A I believe he was; yes, I had seen them together a great deal, and I believe they associated socially.

Q And had there been any other transactions between them? A Yes; he bought a piece of 30 property and paid fifty dollars on it, and then he asked for it back, and we gave it back to him, and I believed we treated him so fairly that is the reason I believed him.

Q That isn't the reason why you signed the contract without waiting to hear from Beckmann? A That is the reason I delayed two days.

Q After you signed the contract, did you still have any doubt about it? A Yes; I was very uneasy about it. 40

*William J. Eypper, cross.*

Q Did you do anything else about it? A Yes; I sent a letter to him and that telegram came in response to that letter.

Q That telegram was the first you heard from him? A Yes.

10 Q He didn't even send you a postal card, did he? A No; he didn't.

Q How long had you been in business with him? A About two years.

Q Two years? A At that time, about a year.

Q Does your wife work in the office of the corporation? A No; she works home.

Q You say that when Mr. Beckmann did return, Mr. Limenfeld came to the office, did he? A Yes, but not immediately; upon his being  
20 asked to; not for two or three days afterwards, although he had been asked repeatedly to come over.

Q Two or three days after Mr. Beckmann returned? A I think it was at least two days.

Q Then you had an argument? A Mr. Beckmann and he had an argument.

Q And Limenfeld said: "My word is as good as yours and they are going to get this property"? A And "I am going to get mine."

30 Q Is that what he said? A Yes.

Q What did you say to that yourself? A I said that you are not going to get it.

Q You did say that? A Yes.

Q What did Beckmann say? A He supported that.

Q You both agreed to that? A Yes.

Q Two or three days after he returned? A Yes.

40 Mr. Mackay: That is all.

*George H. Beckmann, direct.*

*By Mr. Seley.*

Q Was a letter sent to Mr. Beckmann, prior to August 12th, informing him of that sale? A Yes.

Q Then after the letter was sent the telegram offered in evidence was received from Mr. Beckmann? A Yes. 10

Mr. Seley: That is all.

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GEORGE H. BECKMANN, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

*Direct examination by Mr. Seley.*

20

By the Court: Where do you reside?

The Witness: Palisade, New Jersey.

The Court: You are a member of the corporation?

The Witness: Yes, sir.

Q What is your office in the company? A Secretary and treasurer.

Q How much stock do you and your wife hold? A Fifty per cent. 30

Q And the other fifty per cent. is held by whom? A Mr. Eypper and his wife.

Q Was any resolution passed in August, 1925, accepting the offer made by—

Mr. Mackay: I object to that.

*By the Court.*

Q Have you any minute book? A Yes, sir.

Q Where is it? A It is here in court. 40

*George H. Beckmann, direct.*

Q Was there any resolution passed; I will ask the specific question. It is objected to and I will sustain it, and produce the minute book and we can see if there was any resolution.

*By Mr. Seley.*

10 Q I show you this book, and I ask you if this is the book containing the minutes of the Eypper & Beckmann, Inc., Company? A Yes, sir.

Q Just go through that; is there any resolution in that book showing that there was any agreement authorized to be entered into with Newman relative to this property here? A There is none.

*By the Court.*

20 Q Have you by-laws? A Yes.

Q Have you got a copy of the by-laws? A Yes.

*By Mr. Seley.*

Q I show you a copy of the by-laws, and I ask you if there is anything in the by-laws authorizing the president to execute a contract of this kind?

30 Mr. Mackay: I object to it on the ground that it is not binding on the complainant.

The Court: I will note your objection and allow it to go in.

A None.

Q Is there anything in your by-laws authorizing the president to sign an agreement for the sale of property for the corporation? A None.

40 Q Was there any meeting held by the board of directors of this company, authorizing the sale of this property to Mr. Newman? A No, sir.

*George H. Beckmann, direct.*

Q Was there any meeting held subsequent to that, ratifying the agreement with Mr. Newman for the sale of this property?

Mr. Mackay: I object to the question; I think the minutes speak for themselves.

The Court: It is pretty leading. He 10 says there is nothing.

*By the Court.*

Q What were your proceedings before that?

A We never had sales of acreage.

Q You have had sales? A We have had sales of small properties—houses and lots.

Q Did you ever have an occasion where one of you agreed to sell a piece of property and the other repudiated? A No. 20

*By Mr. Seley.*

Q The understanding was that you were to sign all agreements together? A We always consulted each other before we sold any property, and always signed together.

Q When did you first learn about the sale of this property at the rate of thirteen hundred dollars per acre? A I received a letter up in 30 Canada, about the twelfth of August.

Q 1925? A 1925.

Q What did you do then? A I sent a telegram to Mr. Eypper and said we had never offered the property for thirteen hundred dollars, and in fact we had refused a higher offer.

*By the Court.*

Q Did you mention the property to Mr. Limenfeld? A Yes, sir. 40

*George H. Beckmann, direct.*

Q Had you been friendly? A Yes; we had.

*By Mr. Seley.*

Q I show you this telegram and ask you if you sent it? A Yes.

10 Q Now, after you got back—when did you get back to Jersey? A It was after the fifteenth—probably around the eighteenth or nineteenth.

Q Of August? A Of August.

Q Before leaving Canada, did you receive any other message besides the letter from Eypper? A No.

Q Now, when you got back around the eighteenth or nineteenth of August; what did you do? A After discussing the situation with Mr. Eypper, I decided to call Mr. Limenfeld over for the purpose of telling him that I didn't intend to go through with the contract.

Q What did you do? A Mr. Limenfeld was called up and told to come to our office.

Q How long had you known Mr. Limenfeld? A For two or three years.

Q Knew him well? A I knew him fairly well.

Q Socially and in a business way? A Yes.

30 Q Tell us what you did. A Limenfeld came over a few days later, and I said: "What is this you did in my absence"? and I said: "You knew I never quoted you a price less than sixteen hundred," and he said: "Yes you did," and we had an argument about that; he saying that I did, and I saying that I didn't, and I said: "You know I didn't and I don't intend to go through with the transaction," and I said: "We will not go through with the transaction, but I will return either the twenty-five hundred dollars, or

40

*George H. Beckmann, direct.*

the three thousand dollars, and you return the five hundred dollars, and we will not go through with it."

Q What did he say? A He said: "You have signed a contract, and you will go through with it, and my word is as good as yours."

Q Did you see him after that? A No. 10

Q Did you call him up at all? A No.

Q Did he come in after that? A No.

Q What did you do after that? A We didn't know what to do; we simply—

Q You were waiting? A We were waiting.

Q Did you know who the actual owners of the agreement were; whether it was assigned to anybody; did you know it at that time? A No.

Q When did you receive any information about the assigning of the contract, or the going through with the deal? A The first time was when Mr. Newman called me up. 20

Q Did you receive a letter subsequent to that conversation? A Yes.

Q The following day? A The following day, I believe.

Q I show you this letter, and tell us whether this letter refreshes your memory as to when you had the conversation with Mr. Newman? A Yes. 30

Q When was the conversation had? A September 25th.

Q What was the conversation? A Mr. Newman stated in substance what is contained in that letter.

Q What did you tell him? A I expressed surprise, and asked him if he wasn't informed by Doctor Limenfeld that we didn't intend to go through with the transaction, and he said: "No," and he asked why, and I said I didn't want to 40

*George H. Beckmann, direct.*

discuss the matter, but he would hear from our attorney in due time.

Q Did you tell him you were ready to close with the Ritz Realty Company on the second of October? A No; because I never knew the contract had been assigned until I received that letter. 10

Q When did you first receive the information that the contract was assigned? A When I received that letter.

Q Now, when you received that letter, what did you do then? A I got in touch with our attorneys.

Q You got in touch with your attorney in Newark? A Yes.

Q And what happened then? A We returned the three thousand dollar deposit to Mr. Newman. 20

Q You got in touch with David N. Popik, your attorney, who is my associate? A Yes, sir.

Q And he wrote a letter to Mr. Newman, and returned the check of three thousand dollars? A Yes, sir.

Q September 30th? A Yes, sir.

Q Did you deliver a check to Mr. Popik for three thousand dollars, at the time this letter was written? A Yes, sir. 30

Q I show you this check of three thousand dollars, dated September 28, 1925, made to the order of Mr. Newman, and signed by you and Mr. Eypper, and I ask you if this is the check Mr. Popik enclosed in his letter when he wrote to Mr. Newman? A Yes, sir.

Mr. Seley: I offer the check in evidence.

The Court: Have it marked.

Check marked Exhibit D. 3, as of this date.

Mr. Seley: That is all. 40

*George H. Beckmann, cross.*

*Cross examination by Mr. Mackay.*

Q Do you remember your conversation with Mr. Newman? A Yes, sir.

Q You say you expressed surprise? A Because I thought Mr. Limenfeld had notified him before. 10

Q Had you notified him before? A Yes, sir; Mr. Limenfeld.

Q You personally? A Yes.

Q Then why did you express surprise? A Surprise that Mr. Newman still expected us to go through with the deal.

Q Did you tell him that? A Yes.

Q And did you tell him you were surprised that he hadn't heard from your attorney? A No; I asked him if Doctor Limenfeld hadn't told him. 20

Q You had been in communication with your attorney? A No, sir.

Q You hadn't? A No, sir.

Q Didn't you ask him if he hadn't heard from your attorney? A No, sir.

Q But notwithstanding that you had been to an attorney prior to that? A I don't believe we had.

Q Hadn't been prior to the 25th? A I don't believe we had. 30

Q And notwithstanding your surprise at that time, you still retained this three thousand dollars in your corporate account? A Yes; I had offered it to Limenfeld, but he refused it.

Q When did you have your communication with your attorney? A The day after hearing from Newman.

Q About the twenty-seventh? A The twenty-sixth or twenty-seventh; it might have been the same day; I don't know. 40

*George H. Beckmann, cross.*

Q Do you sign checks, too? A Yes, sir.

Q Both of you sign checks? A Yes, sir.

Q Why didn't you sign this check, instead of letting Mr. Eypper sign it? A I don't think there is any particular reason.

10 Q Did you direct Mr. Eypper to sign it, or wasn't there any necessity to do that? A It wasn't necessary.

Q It wasn't necessary? A No.

Q You both had power to sign checks? A Yes.

Q You say you saw Limenfeld before going to Canada, and spoke about selling this property?

A What is that?

Q You talked to Doctor Limenfeld about this property before leaving for Canada? A Yes, sir.

20 Q And told him the price of it? A Yes, sir.

Q What did you tell him? A Sixteen hundred dollars an acre.

Q Did you tell Limenfeld that? A Yes, sir.

Q Did you tell Eypper that? A I told Eypper that I had quoted that price to Limenfeld?

Q Yes. A I didn't think it was necessary; that was the price we quoted to everybody.

30 Q Isn't it a fact that before you went to Canada you talked with one of the Newmans and took him to the property and looked it all over? A Yes.

Q Didn't you tell Mr. Eypper that you had an offer of sixteen hundred dollars? A No; we didn't receive any offer.

Q Who had charge of the office while you were in Canada? A Mr. Eypper.

Q And he had charge of the office? A Yes.

40 Q And he is the president of your corporation? A Yes.

*George H. Beckmann, cross.*

Q And when you returned, you say, you were surprised to learn that he had sold it for thirteen hundred dollars? A I heard in Canada that he had negotiated to enter into some sort of an agreement for the property.

10 Q Didn't Mr. Eypper tell you that he had made a contract to sell this particular property for thirteen hundred dollars an acre? A No; he didn't state that.

Q Did you ask him to state the particulars? A No; I got the letter on the twelfth, and I came back shortly after.

Q You got the letter on the twelfth? A Yes, sir; on the eleventh or twelfth; I don't remember just when.

20 Q And has that been your method of carrying on this corporate business ever since you have been with Mr. Eypper? A What method do you mean?

Q Going away and quoting a price of sixteen hundred dollars and showing a property; that is true, isn't it? A What is that?

Q That you did go to the property with one of the Newmans? A Yes.

Q And also Dr. Limenfeld? A Yes, sir.

*By the Court.*

30 Q As I understand it, you didn't go through a contract without consulting with the other party? A No, sir; we both have to sign, according to the constitution; we often sell a property, and wouldn't have to at this time if I had been here.

*By Mr. Mackay.*

40 Q You don't both have to sign checks? A No.

*George H. Beckmann, cross.*

Q Either one? A Either one.

Q And you said also that you always consulted when any question arose over corporate affairs? A Yes, sir.

Q When you went to Canada, what did you say to Eypper? A I didn't say anything.

10 Q He took full charge? A Yes, sir.

Q Has general management of the corporation? A Yes, sir.

Q When you sold this, this property you sold it under this contract at a profit?

Mr. Seley: I object to the question.

The Court: He said he thought it had gone up, and has gone up more now.

20 Q Isn't it a fact that before you went to Canada you put the property in the hands of John Kelly, a real estate agent, at thirteen hundred dollars an acre? A No, sir; I never quoted that price.

Mr. Mackay: That is all.

*By Mr. Seley.*

30 Q How many acres were there? A Twenty-seven.

The Court: It is all in the contract.

Q You received a letter from Mr. Newman on the following day? A I believe so.

Q And Sunday was the twenty-seventh of September? A Yes, sir.

40 Q When did you first consult Mr. Popik about it; the following day? A I believe so; it was the day the letter was written.

*John Kelley, direct.*

Q That was the twenty-eighth? A Yes, sir.

Q And so you didn't wait until then—

Mr. Mackay: I object to that; he is testifying for the witness.

Mr. Seley: That is all.

DEFENDANT RESTS.

10

JOHN KELLEY, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

*Direct examination by Mr. Mackay.*

The Court: Where do you reside, Mr. Kelley? 20

The Witness: Teaneck.

Q What is your business, Mr. Kelley? A Real estate.

Q How long have you been in that business? A About three years.

Q Where? A In Teaneck, on Cedar Lane.

Q Are you acquainted with this property? A Yes, sir; very much so; in fact, I made an offer to buy that once. 30

The Court: For how much?

The Witness: Nine hundred dollars.

Q How much was it worth at that time—before this August? A This property was sold, and then it was resold—

Q I don't care about that. A It was considered worth about twelve or thirteen hundred dollars. 40

*Samuel Limenfeld, direct.*

Q At the time around August 5th? A Yes, sir.

Q Do you know what the value was between September 25th and September 30th? A About twenty-seven hundred dollars.

10 The Court: About double the value?

The Witness: Yes, sir.

Mr. Mackay: That is all.

(No cross examination.)

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SAMUEL LIMENFELD, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

20 *Direct examination by Mr. Mackay.*

Q Where do you live, doctor? A I live in Palisade.

Q Do you know Mr. Eypper and Mr. Beckmann, of Eypper & Beckmann, Inc.? A I do.

Q How long have you known them? A I have known Mr. Beckmann for two or three years, but I haven't known Mr. Eypper so very long.

30 Q Did you ever have any conversation with Mr. Beckmann about this property? A Yes; during that summer my family was away, and I often stopped in the real estate office and he spoke to me about this property, and he was very enthusiastic about it, and he told me I could make a little money for myself if I could sell it for thirteen hundred dollars I would get two and a half per cent.

40 Q When was that? A In July.

*Samuel Limenfeld, direct.*

Q And after that conversation, did you do anything about the property? A Yes; I met Mr. Newman at a lodge meeting, and I told him about it, and he told me that he would get in touch with me during the week and see if he could come out and look at it, and he called me up and said he couldn't get out, but he would send his two brothers out who I had met at the seashore, and they came out and we went to Mr. Beckmann's office, and we all went out to the property.

Q And what did they say? A They said they would talk it over with Mr. Edward Newman and let us know.

Q Did Mr. Beckmann mention the price? A Yes, sir; thirteen hundred dollars an acre.

Q Then what happened? A Then I met Mr. Newman at the seashore, and he gave me a check for five hundred dollars, and he said his brother would agree to it, and I accepted the check.

Q Is that the check for five hundred dollars that has been offered in evidence here today? A That is the check.

Q Did you endorse that to the order of Eypper & Beckmann? A I did.

Q All right. After you got that check, who did you give it to? A Well, I came in the next morning to Eypper & Beckmann's office, and I gave it to Mr. Eypper, and he said he would let me know the latter part of the afternoon, which he did, and I came around that afternoon, and it was evening, I guess, and he gave me a binder for the five hundred dollar check on the property, which stated that the contract should be drawn on the fifth, which was two days later.

Q And is that the binder which you referred to? A That is the binder.

*Samuel Limenfeld, cross.*

Mr. Mackay: I offer the binder in evidence.

The Court: Admitted.

(Binder marked Exhibit C. 11, as of this date.)

10 Q After that, doctor, what happened? A On the fifth of the month Mr. Edward Newman and Mr. Stanley Newman came around and we all went down to Eypper & Beckmann's office, and, of course, I represented Eypper & Beckmann—went down to see that the contract was signed, and the contract was signed, and Mr. Eypper gave me a check for five hundred dollars as part of my services, and promised me the rest when title was taken.

20 Q Did you hear anything from Eypper & Beckmann after that? A Several weeks after that I got a call from the office and I didn't delay; I went right over and they kept me waiting about an hour, and they were discussing something, and Mr. Backmann said: "Did I tell you thirteen hundred dollars?" and I said: "Yes," and he said: "No; I said sixteen hundred dollars," and I said: "No, George, you told me thirteen hundred dollars several times," and I said: "You know my standing in the community and I wouldn't misquote you at all."

30 Q Was anything else said? A No.

Q Did you ever hear anything from him? A Nothing at all.

Mr. Mackay: That is all.

*Cross examination by Mr. Seley.*

40 Q Didn't he say that he wanted to return the money? A No, sir.

*Samuel Limenfeld, cross.*

Q Didn't he say he wanted to repudiate the sale? A No, sir.

Q Didn't he say he had sent a telegram? A No, sir.

Q Didn't Mr. Eypper say he was going to send a telegram to Mr. Beckmann? A He said he would see me in the evening, and when I heard from him I thought he had received word from him. 10

Q Didn't he say he had heard from the telegraph company that they couldn't deliver the telegram? A No, sir.

Q Didn't you say to Mr. Eypper that you were personally interested in this transaction? A No, sir.

Q Did you ever sell any other property before? A No, sir. 20

Q As a broker? A No, sir.

Q Have you a license as a broker? A No, sir.

Q And you took this commission of five hundred dollars, even though you weren't a broker? A Because Mr. Beckmann had promised it to me.

Q You were anxious to make some money on this transaction? A Why, certainly; everybody is anxious to make money. 30

Q And you met Mr. Newman on Sunday? A Yes.

Q And he gave you a check for five hundred dollars? A Yes, sir.

Q And he was very anxious to put through the deal? A Yes, sir.

Q Weren't you anxious to make this deal? A Certainly I was.

Q And didn't you tell Mr. Eypper you were anxious to make the deal? A Yes. 40

*Stanley Newman, direct.*

Q And you saw Mr. Eypper on Monday, August 3rd? A Yes, sir.

Q And you saw him also on Tuesday, August 4th? A No; I saw him on Wednesday, August 5th.

Q And on those times, how many times did you see Mr. Eypper on August 3rd, and August 5th? A I believe I saw him the day I got the binder.

Q Didn't you tell him Mr. Beckmann said he was willing to sell it for thirteen hundred dollars an acre, and he was going to give you a commission of two and a half per cent.? A Yes.

Q How many times did you tell him that? A I went out and told him that once.

Q Did Mr. Beckmann tell you that he was not going through with the deal, when he came back? A He never said anything of the kind.

Q Did he tell you to communicate that to Mr. Newman? A No, sir.

Q Didn't he offer you the twenty-five hundred dollars back? A No, sir.

Q Nothing at all? A No, sir.

Mr. Seley: That is all.

30

STANLEY NEWMAN, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

*Direct examination by Mr. Mackay.*

*By the Court.*

Q You are a brother of Mr. Edward Newman? A Yes, sir.

40

*Stanley Newman, direct.*

Q Were you present when this transaction for this property was put through? A Yes, sir.

Q On what occasion? A I was present twice; on the occasion when he showed us the property, and I was present at the time the contract was made.

Q Did you hear any price fixed per acre? A Certainly.

Q How much? A Thirteen hundred dollars an acre.

Q Who said that? A Mr. Beckmann; he told us that several times. He kept ahold of me over at the ferry, and he didn't want to let me go until I bought it, and I said: "What did you pay for it; I will give you a fair profit," and he said that didn't make any difference, and I went back and spoke to my brother, and told him about it, and I spent two or three days over there around the territory, and I thought it was worth about thirteen hundred dollars an acre, and then I met Dr. Limenfeld, and he told me about the future of Bergen County, and I said: "All right; here is a check for five hundred dollars"; I couldn't get in touch with my brother at that time; it was on Sunday, and I gave him my check for five hundred dollars, and I told him the terms—thirteen hundred dollars, and I said to get a binder, and he called me up the next day and he told me he was sending me a binder, and I said: "All right," and I asked him when we were to close, and he said on the fifth, and I said: "All right"; that was all there was to it.

Mr. Mackay: That is all.

40

*Arthur Newman, direct.*

*Cross examination by Mr. Seley.*

Q You don't know what transpired between Limenfeld and Eypper, do you, on August 4th?

A I know he gave him a binder.

10 Q You don't know what conversation took place? A No; I wasn't present at that time.

Q Have you any stock in this Ritz Realty Company? A No, sir.

Q If the company makes a million dollars, you have no interest at all? A Not a penny's worth.

Q Did you make any money on this transaction? A No, sir.

Q You have no interest in it? A None whatever.

20 Q Not in the original contract or the assignment? A None whatever.

Mr. Seley: That is all.

ARTHUR NEWMAN, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

30 *Direct examination by the Court.*

Q You are a brother of Mr. Edward Newman? A Yes, sir.

Q Do you recall this conversation that you are alleged to have been present at? A Yes, sir.

Q When the price of the property was mentioned? A Yes, sir.

40 Q What was the conversation? A We met Mr. Limenfeld at the ferry, and he took us to

*Arthur Newman, cross.*

Mr. Beckmann, and he showed us this property and relative property around the county, and when we came back we asked him what the lowest price was, and he said thirteen hundred dollars an acre, and we asked him if he would take a profit on his contract, and he said he was making a profit, and he also said he could use 10 the money, and after spending about an hour at the ferry he said: "You will make money on it, and you will be my client, and you will come over here and we will make further commissions on other deals.

Mr. Mackay: That is all.

*Cross examination by Mr. Seley.*

Q You remember distinctly that it was thirteen hundred dollars an acre? A Yes, sir. 20

Q And you talked it over with Mr. Limenfeld? A Yes, sir.

Q Since the conversation was had? A Yes, sir.

Q And you all remember it was the same figure of thirteen hundred dollars an acre? A Yes, sir.

Q That is the amount he asked for it? A 30 Yes, sir.

Q And that is the amount you offered him for it? A We gave him his price.

Q Why didn't you try to have it reduced? A We did.

Q What did you do about it? A He wouldn't come down any and so my brother bought it at his price.

Q When was this property shown to you? A The latter part of July. 40

*Edward Newman, recalled, direct.*

Q What date? A I don't remember the date.

Q And you went with Mr. Beckmann and Mr. Limenfeld and your brother? A That is right.

Q And that is the time he offered it to you at thirteen hundred dollars an acre? A Yes, sir. 10

Q And that was the only price he offered the property for? A Yes, sir.

Q You didn't attempt to reduce the price? A I didn't have anything to do with that.

Q The conversation was had in the middle of July? A Around the twentieth or twenty-first.

Q And the agreement was signed on August 5th? A Yes, sir.

Q Did you do anything between July 20th and August 5th, to reduce the price? A Yes, sir. 20

Q But you didn't reduce the price any? A No, sir.

Mr. Seley: That is all.

EDWARD NEWMAN, a witness having already been called and sworn on behalf of the complainant, is recalled and testified as follows: 30

*Direct examination by Mr. Mackay.*

Q Mr. Newman, did Mr. Eypper ever tell you at the time he made this contract, that he was making a conditional contract with you? A No, he did not.

Q Did Mr. Beckmann ever say to you that he was surprised? A No; he didn't say it. Mr. Beckmann never told me on September 25th, 40

*George H. Beckmann, recalled, direct.*

that he was surprised and that his company would repudiate the contract; he told me that on September 30th.

Mr. Mackay: That is all.

(No cross examination.)

10

GEORGE H. BECKMANN, having already been called and sworn on behalf of the defendant, is recalled and testified as follows:

*Direct examination by Mr. Seley.*

Q Mr. Beckmann, while you were away to Canada, did you receive information from anyone that the value of this property had gone up? A No, sir. 20

Q Did you receive information in any manner that the value had increased between August, when you arrived, and the time you spoke to Mr. Newman; did you receive any information about the increase in value?

Mr. Mackay: I object to the question.

Mr. Seley: I will withdraw it. That is all. 30

(No cross examination.)

Mr. Seley: I would like to make a motion to amend my defense.

The Court: I think you ought to amend your pleadings.

Mr. Newman: If the Court, please: They set up in their answer that they refused to—

The Court: Yes, but now they make an application to amend. If this application 40

*George H. Beckmann, recalled, direct.*

had not been made now to amend, the Court could possibly dispose of the matter now, but there is a very interesting question raised here. Do you want copies of the testimony, or do you want to let it rest as it is?

10 Mr. Mackay: I don't see what benefit could be made by an amendment now.

The Court: There were three or four questions propounded to the complainant, whether he made any offer to assume the mortgage of seventeen thousand dollars. I think the evidence is all in and it doesn't make much difference, and I am inclined to grant the request.

Mr. Mackay: I don't want to make any objection, but I would like to—

20 The Court: Your objection will be noted on the record.

It is agreed that the argument of the case will take place October 4, 1926.

30

40

*Exhibit C. 1.*

**Exhibit C. 1.**

AGREEMENT, made and dated August 5th, 1925, between EYPPER & BECKMANN, Incorporated, a Corporation of the State of New Jersey, hereinafter described as the seller, and EDWARD D. NEWMAN, of the City of New York in the County of New York and State of New York hereinafter described as the purchaser:

WITNESSETH, that the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot or parcel, of land, with the buildings and improvements thereon, in the Township of Teaneck, County of Bergen and State of New Jersey described as follows: All those tracts or parcels of land and premises hereinafter particularly described, situate lying and being in the Township of Teaneck in the County of Bergen and State of New Jersey, and which are plotted, laid out and designated on a certain map on file in the Clerk's Office of the County of Bergen, entitled "Map of Property of John V. H. Terhune, dec'd Bergen Co., N. J. 1895, Willard Cass, C. E." and which in a certain deed made by Cornelius J. Terhune and wife to said Conrad Gemmer, which deed is dated August 10, 1896 and is recorded in the Bergen County Clerk's Office in Book 437 of Deeds, pages 137 etc., are described as follows:

THE FIRST TRACT, begins in the centre of Teaneck Public Road at a point where the center line of said road and the southerly line of lot number two intersect, from thence running (1) North thirty-three degrees five minutes East three hundred and seven and eight tenths feet to land of W. W. Phelps, thence (2) South sixty degrees and fourteen minutes East thirteen hundred

*Exhibit C. 1.*

and fourteen and four tenths feet, thence (3) South twenty-six degrees fifteen minutes west one hundred and fifty feet to the land of said Phelps, thence (4) North sixty degrees and thirty minutes West seven hundred and seventy-five feet, thence (5) South thirty-three degrees, fifteen minutes west two hundred and seventy-five feet, thence (6) South eighty-three degrees, fifteen minutes west sixty-seven feet, thence (7) North sixty-one degrees twenty-five minutes west eighty-five feet, thence (8) North fifteen degrees west twenty-one and seventy-four hundredths feet, thence (9) North ten degrees twenty-five minutes west one hundred and one and sixty-four hundredths feet, thence (10) North fifteen degrees twenty-five minutes West sixty-six feet, thence North sixty degrees ten minutes west two hundred and seventy-two feet and three tenths of a foot to the center of said road, and place of beginning. Containing four and nine tenths acres. Being plot number two (2) on said map.

THE SECOND TRACT, begins in the center line of Teaneck public road, where the same is intersected by the center of a lane dividing the premises being described from lands of Benjamin Parker, from thence running (1) North thirty-three degrees five minutes east two hundred and ninety-three and seven tenths feet, thence (2) South sixty degrees ten minutes east two hundred and seventy-two and three tenths feet, thence (3) South fifteen degrees twenty-five minutes east sixty-six feet, thence (4) South ten degrees twenty-five minutes east one hundred and one and sixty-four one hundredths feet, thence, (5) South fifteen degrees east twenty-one and seventy-four hundredths feet, thence (6) South sixty-one degrees twenty-five minutes east eighty-

*Exhibit C. 1.*

five feet to the center of the Brook near the south end of the mill pond, thence (7) Down said brook its several courses to the center of said lane aforesaid, thence (8) North sixty degrees twenty-five minutes west six hundred and twelve feet to the center of Teaneck Road aforesaid, being plot three on said map and containing three acres and five tenths of an acre.

Excepting and reserving therefrom, however, the following:

BEGINNING in the southwesterly corner of plot number three at the intersection of the center lines of Teaneck Road and said lane, thence (1) Along the center line of Teaneck Road north thirty-three degrees five minutes east two hundred feet thence (2) South sixty degrees twenty-five minutes east three hundred and sixty two and ninety-seven hundredths feet, thence (3) South ten degrees twenty-five minutes east forty-one and ninety-eight hundredths feet, hence (4) South eleven degrees twenty-five minutes east twenty-one and seventy-four hundredths feet, thence (5) South sixty-one degrees twenty-five minutes east seventy-nine feet, thence (6) South sixteen degrees twenty-five minutes east twenty-five feet, thence (7) North seventy-three degrees twenty-five minutes east seven feet, to the center of Brook, thence (8) Down said brook its several courses, to the center of said land aforesaid, thence (9) North sixty degrees twenty-five minutes west six hundred and twelve feet to the center of Teaneck Road aforesaid, the point of BEGINNING. Containing two and thirty-six hundred and seventy-eight ten thousandths acres.

THE THIRD TRACT, begins in the southwesterly corner of the plot being described and in the line of lands of the estate of W. W. Phelps,

*Exhibit C. 1.*

thence running (1) North thirty-nine degrees and thirty-two minutes east three hundred and sixty-eight and eight tenths feet, thence south fifty-nine degrees six minutes east fifteen hundred and forty-one and seventy-five hundredths feet, thence South sixty-one degrees and six minutes east 10 seven hundred and thirty feet, thence through the middle of a creek its several courses as on said map easterly, to the west side of Drainage Canal running from Englewood to the Overpeck Creek, thence returning to the beginning point and running south sixty-two degrees and twenty-two minutes East sixteen hundred and twenty feet, thence south fifty-eight degrees and forty-five minutes east twelve hundred and eighty feet to the west bank of said canal, and thence north- 20 erly along the west bank of said canal to the end of the fourth course and creek aforesaid, as shown on said map. Being plots five and six on said map. Plot five containing eleven acres and five thousand two hundred and ninety-five ten thousandths of an acre. Plot six containing eight acres and two hundred and seventy-three one-thousandths acres.

THE FOURTH TRACT, beginning in the southwesterly corner of said tract at a marked 30 tree, and running thence (1) North twenty-six degrees fifteen minutes east one hundred and fifty feet, thence (2) South fifty-seven degrees forty-four minutes east three hundred and thirty-seven and four tenths feet, thence (3) South forty-eight degrees forty-three minutes west seventy-one feet, thence (4) South forty-four degrees and thirty-eight minutes west seventy-nine and two tenths feet thence (5) North fifty-eight degrees twenty-nine minutes west two hundred and eighty-four and six tenths feet to the 40

*Exhibit C. 1.*

place of BEGINNING. Being plot number four on said map and containing one acre and three hundred and seventy-five ten thousandths of an acre.

Being the same premises conveyed to said Cornelius J. Terhune by Jacob Terhune *et ux* by 10 deed dated September 2, 1895 and recorded in the Bergen County Clerk's Office in Book 412 of Deeds, pages 65, etc.

Together with all the right, title and interest of said Cornelius J. Terhune in and to a certain right-of-way granted to him by John J. Phelps, William E. Bond and Thomas R. White, Executors of the last will and testament of William Walter Phelps, deceased, by a certain grant of right-of-way between lots four (4) and five (5) 20 aforesaid, under agreement dated August 20, 1896, and subject to the conditions therein expressed."

Being the same lands conveyed to the aforesaid Eypper & Beckmann, Incorporated, by Conrad Gemmer and Anna Elizabeth Gemmer, his wife by deed dated July 1st, 1925 and recorded July 13th, 1925.

In the event the party of the second part shall fail to perform any of the agreements on its part herein contained, all right of the party of the 30 second part to this agreement shall become null and void and all moneys theretofore paid thereon become forfeited by the party of the second part to the party of the first part and this shall be without recourse at law by the party of the second part.

The party of the second part agrees that the party of the first part shall be entitled to the use of said lands until the date of delivery of 40

*Exhibit C. 1.*

deed and to all the crops of fruit and grain now growing thereon.

This sale covers all right, title and interest of the seller of, in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining said premises, to  
10 the centre line thereof.

The price is THIRTY-FIVE THOUSAND THREE HUNDRED SEVENTY-TWO (\$35,372) Dollars (But not in excess of \$1,300 per acre) payable as follows: THREE THOUSAND (\$3,000) Dollars on the signing of this contract, the receipt of which is hereby acknowledged,  
20 NINE THOUSAND (\$9,000) Dollars in cash or by certified check on the delivery of the deed as hereinafter provided, and interest at the rate of six per cent (6%) per annum from September 1st, 1925 on the balance due, time being declared as of the essence of this contract.

\$17,000 by assuming a mortgage now a lien on said premises, payable July 1, 1930,

\$6,372 by execution of a purchase money mortgage to run for two years from date of delivery of deed with stipulation that mortgagor shall pay \$1,000 or more on account of principal every six months after the date thereof, said mortgage  
30 to contain a release clause stipulating that the mortgagee will release the tracts described as plots number 2 and number 3 of said map upon payment of \$4,000 and all the remainder of the property hereby described upon payment of \$2,372.

Said mortgage may be executed by the party of the second part or his assigns.

The deed shall be delivered upon the receipt of said payments at the office of EYPPER &  
40 BECKMANN, Inc., at twelve o'clock, November

*Exhibit C. 1.*

5th, 1925, or before, at the option of purchaser by giving 5 days notice in writing.

Taxes, rents, insurance, water rents, and interest on mortgages, if any, are to be apportioned, as of September 1st, 1925.

The deed shall be in proper form for record, shall contain the usual covenants and warranty, and shall be duly executed and acknowledged by the seller, at the seller's expense, so as to convey to the purchaser the fee simple of the said premises, free of all encumbrances except as herein stated. 10

It is understood and agreed that any assessment confirmed and entered prior to the date of closing, shall be paid by the seller in full.

The risk of loss or damage to said premises by fire until the delivery of the deed is assumed  
20 by the seller.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

The seller agrees that brought about this sale and agrees to pay the broker's commission therefor.

WITNESS the signatures and seals of the above parties. 30

Signed, sealed and delivered  
in the presence of

EYPPER & BECKMANN, INC. (L. S.)  
WM. J. EYPPER, Pres't (L. S.)  
EDWARD D. NEWMAN (L. S.)  
Seal of Eypper & Beckmann, Inc.

*Exhibit C. 2.*

STATE OF NEW JERSEY, }  
COUNTY OF BERGEN. } ss.

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord, One Thousand Nine Hundred and Twenty-Five, before me, the subscriber, a personally appeared who, I am satisfied, mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon acknowledged that, signed, sealed and delivered the same as voluntary act and deed for the uses and purposes therein expressed.

20

**Exhibit C. 2.**

CERTIFICATE OF INCORPORATION  
of  
EYPPER & BECKMANN, INC.

This is to certify, that we, the undersigned, do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

FIRST: The name of the corporation is EYPPER & BECKMANN, INC.

SECOND: The location of the principal office in this State is at #10 Abbott Boulevard, Palisade, Borough of Fort Lee, County of Bergen, State of New Jersey.

40

*Exhibit C. 2.*

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is George H. Beckmann, #10 Abbott Boulevard, Palisade, Fort Lee, County of Bergen, State of New Jersey.

THIRD: The objects for which this corporation is formed are:

1. To acquire and take over as a going concern the business now carried on at #10 Abbott Boulevard, Palisade, Borough of Fort Lee, County of Bergen, State of New Jersey, under the style or firm of Eypper & Beckmann, and all or any of the assets and liabilities of the proprietors of that business in connection therewith.

2. To acquire by purchase, lease, exchange or otherwise, real property improve or unimproved and any estate or interest therein and any rights over or connected with real property, and to turn the same to account, as may seem expedient, and in particular by preparing building sights, and by constructing, reconstructing, alteration, improving, decorating, furnishing, and maintaining offices, flats, houses, factories, warehouses, shops, wharves, buildings, works and conveniences of all kinds, and by consolidating or connecting or subdividing properties, and by leasing and disposing of the same.

3. To manage land, buildings and other property situate as aforesaid, whether belonging to the company or not, and to collect rent and income, and to supply to tenants and other attendance, messengers, light, heat and power and all other conveniences, electric or otherwise, and other advantages.

4. To acquire and take over any business or undertaking carried on, upon or in connection

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*Exhibit C. 2.*

with any land or building which the company may desire to acquire as aforesaid, or become interested in, and the whole or any of the assets and liabilities of such business or undertaking, and to carry on the same, or to dispose of, remove, or put an end thereto, or otherwise deal  
10 with the same as may seem expedient.

5. To establish and carry on, and to promote the establishment and carrying on, upon any property in which the company is interested, of any business which may be conveniently carried on upon or in connection with such property, and the establishment of which may seem calculated to enhance the value of the company's interest in such property, or to facilitate the disposal there-  
of.

20 6. To assist financially or otherwise builders, tenants and others who may be willing to build on or improve any land or buildings in which the company is interested.

7. To act as an agent or real estate agent and broker in purchasing, leasing, managing, mortgaging, buying, selling and improving real estate; and to act as agent in buying and selling stocks, bonds, mortgages, debentures, securities and ob-  
30 ligations of every nature, and to collect rents, interest or dividends thereon; to act as agent in the management and investment of estate or funds of any nature, with full powers of agency in the premises, and to act under appointment made by power of attorney or otherwise in any manner, transaction or thing whatsoever.

8. To take, acquire, buy, hold, own, exchange, improve or otherwise deal in and dispose of real estate and real property or any interest and rights therein, without limit as to amount; to  
40 take, acquire, buy, hold, own, sell, hire, lease,

*Exhibit C. 2.*

mortgage, pledge and otherwise deal in and dis-  
pose of all kinds of property, chattels and chattels  
real, without limit as to amount, either directly  
or through ownership of stock in any corporation  
or as agent or principal; to lend money on bonds  
secured by mortgages on real estate or upon per-  
sonal property, or to lend money and make ad-  
vances from time to time on bonds secured by  
mortgages for future advances on real estate or  
upon personal property; to acquire by purchase,  
10 lease, exchange, hire or otherwise, lands or any  
interest therein; to erect, construct, alter, main-  
tain and improve houses, offices, stores, ware-  
houses, mills, shops, factories, machinery, rights,  
easements, permits privileges, franchises and  
licenses, buildings, sewers, drains, or works of  
other description on any lands of the corpora-  
tion, or upon any other lands and to rebuild,  
20 alter and improve existing houses, buildings or  
works thereon, to convert and appropriate any  
such lands, into and build and form roads, streets  
or other public places and conveniences, and  
generally to deal with and improve the property  
of the corporation and do all other things which  
may at any time be necessary or convenient in  
the judgment of the board of directors for the  
purposes of the company. To sell, acquire, hire,  
30 lease, let, mortgage or otherwise sell or dispose  
of the lands, houses, buildings and other property  
of the corporation both real and personal; to  
undertake and direct the management and sale of  
all property, buildings, and lands of the corpora-  
tion or otherwise, and to transact on commission,  
the general business of a real estate agent.

9. To act as agents or brokers in the business  
of marine, fire, automobile, life, accident, work-  
men's compensation and fidelity insurance in  
40

*Exhibit C. 2.*

the business of giving protection to principals and employers and any other kind or class of insurance in all its branches.

10 10. To act as agents or representatives of owners or other persons or corporations having or claiming to have any interest in merchandise, automobiles, buildings, vessels, cargoes, freight or other subjects of insurance.

11. To acquire the goodwill, rights, property and assets of all kinds, and to undertake the whole or any part of the liabilities of any person, firm, association or corporation and to pay for the same in cash, stock, bonds, debentures or other securities of this corporation or otherwise.

20 12. To hold, purchase or otherwise acquire, to sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock and bonds, debentures or other evidences of indebtedness created by other corporation or corporations, and, while the holder thereof, to exercise all the rights and privileges of ownership, including the right to vote thereon.

30 13. To have one or more offices, to carry on all or any part of its operations and business, and unlimitedly and without restriction to hold, purchase, mortgage, lease and convey real and personal property and to conduct its business in any state or territory of the United States, and in any foreign country or place, but subject always to the laws thereof.

14. To do any or all of the things in this certificate set forth as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees or otherwise.

*Exhibit C. 2.*

15. To do all and everything necessary, suitable convenient or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objects herein enumerated, or incidental to the powers herein named, or which shall at any time appear conducive or expedient for the protection or benefit of the corporation, either as holders of or interested in, any property or otherwise; with all the powers now or hereafter conferred by the laws of New Jersey upon corporations under the act hereinafter referred to. 10

16. It is the intention that the objects and powers specified and clauses contained in this paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other *caluse* of this or any other paragraph in this charter, but that the objects and powers specified in each of the clauses of this paragraph shall be regarded as independent objects and powers. 20

17. But nothing herein set forth is to be construed to authorize the formation hereby of an insurance, safe deposit or trust company, banking corporation or savings bank or corporation deemed to possess any of the powers prohibited to corporations formed under the statutory provisions aforesaid. 30

18. The corporation shall also have power to conduct its business in all its branches, at one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any state, territory or colony of the United States and in any foreign country or place. 40

Exhibit C. 2.

FOURTH: The total authorized capital stock of this corporation is Twenty-Five Thousand (\$25,000.) Dollars divided into two hundred and fifty (250) shares of common stock of the par value of One Hundred (\$100.00) Dollars.

10 FIFTH: The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of which is \$25000.00. is the amount of capital stock with which this company will commence business, are as follows:

Name	Post-Office Address	Number of Shares
William J. Eypper,	Palisade, New Jersey,	124
Agnes N. Eypper,	Palisade, New Jersey...	1
George H. Beckmann,	Palisade, New Jersey	124
20 M. F. Beckmann,	Palisade, New Jersey...	1

SIXTH: The period of existence of this corporation is unlimited.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the 31st day of May A. D., 1924.

30 William J. Eypper  
 Agnes N. Eypper  
 M. F. Beckmann  
 Geo. H. Beckmann

Signed, sealed and delivered in the presence of:

Caroline A. Meyer

Exhibit C. 2.

STATE OF NEW JERSEY, }  
COUNTY OF BERGEN. } ss.

BE IT REMEMBERED, that on this 31st day of May A. D. 1924, before me a Notary Public, personally appeared Agnes N. Eypper, M. F. Beckmann, William J. Eypper, George H. Beckmann, who I am satisfied are the persons named in and who executed the foregoing certificate, and I have first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the use and purposes therein expressed.

CAROLINE A. MEYER,  
Notary Public of N. J.

“Endorsed

Received in the office of the Clerk of Bergen County, New Jersey, on the 10th day of June A. D. 1924, at 1:55 o'clock P. M. and recorded in Book page of

WILLIAM P. EAGER,  
C.

Filed and recorded June 16, 1924.

THOMAS F. MARTIN,  
Secretary of State.”

*Exhibit C. 3.*

STATE OF NEW JERSEY

(Cut)

DEPARTMENT OF STATE.

10 I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey Do HEREBY CERTIFY that the foregoing is a true copy of the Certificate of Incorporation of EYPPER & BECKMANN, INC., and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the sixteenth day of June A. D. 1924, and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have  
(SEAL) hereunto set my hand and affixed my official seal at Trenton, this eighteenth day of June A. D. 1926.

20

THOMAS F. MARTIN,  
Secretary of State.

**Exhibit C. 3.**

CERTIFICATE OF INCORPORATION  
OF

30 RITZ REALTY CORPORATION.

This is to certify, that we DANIEL TARDY, EVELYN HERMANN and JEANETTE KAPLAN, hereby associate ourselves into a corporation, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof and do severally agree to take the number of shares of capital stock set  
40 opposite our respective names.

*Exhibit C. 3.*

FIRST: The name of the corporation is  
RITZ REALTY CORPORATION

SECOND: The location of the principal office in this State is at 15 Exchange Place, County of Hudson.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served is

10

UNITED STATES CORPORATION  
COMPANY

THIRD: The objects for which this corporation is formed are:

(a) To purchase, acquire, own, hold, exchange, pledge, mortgage, lease, rent, sell, assign and transfer, invest in, trade in, and otherwise deal in real property and real estate, improved and unimproved, and mortgages on real estate and any interest or right in real property, and to construct, alter and improve real property; to borrow money on real property and to execute and deliver bonds, mortgages and other instruments securing the same; to loan money upon real property, secured by mortgages and assignments of mortgage on the same, and other securities of whatsoever kind and nature; to buy, sell and deal in bonds and loans secured by mortgages or other liens on real property; to transact a general real estate agency, and to manage and develop real property generally; to purchase, sell and deal in building materials and other goods, wares and merchandise and property of every kind and description incidental to or proper and useful in connection with the carrying on of the above business or any other business connected therewith wherever the same may be permitted by law and to the same extent as the laws of this

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*Exhibit C. 3.*

State will permit and as fully and with all the powers that the laws of this State confer upon corporations and organizations under the Act above mentioned, and to do and carry on all or any of the business above set forth to the same extent as natural persons might or could do.

10 (b) To make, purchase, or otherwise acquire, deal in, and to carry out any contract for or in relation to any of the foregoing businesses that may be necessary and lawful under the act pursuant to which this corporation is organized.

(c) To purchase, acquire, hold and dispose of the stocks, bonds, and other securities or evidences of indebtedness of any corporation, domestic or foreign; and to pay cash therefor or to issue in exchange therefor its stock, bonds or  
20 other obligations, and while owner of any such stock, bonds or other obligations, to possess and exercise in respect thereof all rights, powers and privileges of individual owners or holders thereof and to exercise any and all voting powers thereof.

(d) To buy, sell, hold and reissue the stock, bonds or other securities of this corporation.

(e) To borrow money, to make and issue promissory notes, bills of exchange, trade acceptances, bonds, debentures and obligations  
30 and evidences of indebtedness of all kinds whether secured by mortgage, pledge or otherwise without limit as to amount and to secure the same by mortgage, pledge or otherwise.

(f) To make any guarantee respecting dividends, stock, bonds, contracts, or other obligations of any other corporations or associations in which this corporation has or may have any interest so far as the same may be permitted by corporations organized under said corpora-  
40 tion laws of the State of New Jersey.

*Exhibit C. 3.*

(g) To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount, to purchase or otherwise acquire, to hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description in any of the States, districts, terri-  
10 tories or colonies of the United States and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

(h) IN GENERAL, and in connection with the foregoing said corporation shall have and exercise all the powers conferred by the laws of the State of New Jersey on business corporations, it being expressly provided that the fore-  
20 going enumeration of specific powers shall not be held to limit, or restrict, in any manner, such general powers of this corporation.

FOURTH: The amount of the total authorized capital stock of this corporation is Fifteen thousand (\$15,000) Dollars divided into one hundred fifty (150) shares of common stock of the par value of One Hundred (\$100) Dollars each.

The amount of capital stock with which this corporation will begin business is the sum of  
30 Twelve Thousand five hundred (\$12,500) Dollars.

FIFTH: The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscription being the amount of capital stock with which this company will commence business, are as follows:

Exhibit C. 3.

	Names	Post-Office Addresses	No. of Shares
	Daniel Tardy,	255 Ft. Washington Avenue New York, N. Y. ....	123
	Evelyn Hermann,	78 Bank Street, New York, N. Y. ....	1
10	Jeanette Kaplan,	100 West 117th Street, New York, N. Y. ....	1

SIXTH: The duration of this corporation is to be unlimited.

SEVENTH: The corporation may issue and sell its shares, whether now or hereafter authorized, from time to time, in such amounts and proportions and for such considerations as may from time to time, be fixed by the board of directors.

20 EIGHTH: In furtherance, and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

From time to time to determine whether and to what extent and at what times and places and under what conditions and regulations, the accounts and books of the corporation (other than the stock ledger), or any of them, shall be open to the inspection of the stockholders.

30 To sell, assign, transfer and otherwise dispose of any and all of the property of the corporation, including its business, trade names and good will, but no sale of all of the property of the corporation, or of its main business, shall be made except with the consent in writing, or pursuant to the affirmative vote of the holders of two-thirds (2/3) of all of the stock then outstanding.

40 If the by-laws so provide and by a vote of a majority of the whole board to designate two or more of their number to constitute an executive

Exhibit C. 3.

committee, which committee shall for the time being, as provided in said resolution or in the by-laws of this corporation, have and exercise such of the powers of the board of directors in the management of the business and affairs of this corporation as may lawfully be delegated.

The directors shall have power to hold their meetings either within or without the State of New Jersey, and to have one or more offices in addition to the principal office in New Jersey, outside of the State of New Jersey, at such places as may from time to time be designated by them.

This corporation may in its by-laws confer powers additional to the foregoing upon the directors in addition to the powers and authorities expressly conferred upon them by the Statute.

No director shall be disqualified from voting or acting in behalf of the corporation, in contracting with any other corporation in which he may be a director or a stockholder, nor shall any director of the corporation be disqualified from voting or acting in its behalf by reason of any personal interest.

NINTH: This corporation reserves the right to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation, in the manner now is or hereafter prescribed by statute, and all rights, conferred on stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the 3rd day of September, A. D. 1925.

Daniel Tardy (L. s.)  
 Evelyn Hermann (L. s.)  
 Jeanette Kaplan (L. s.) 40

*Exhibit C. 3.*

Signed, sealed and delivered  
in the presence of:

Michael A. Castaldi

10 STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss:

BE IT REMEMBERED, that on this third day  
of September, A. D., nineteen hundred and twen-  
ty-five before me a Commissioner of Deeds, per-  
sonally appeared, DANIEL TARDY, EVELYN  
HERMANN and JEANETTE KAPLAN, who I  
am satisfied are the persons named in and who  
executed the foregoing certificate, and I having  
first made known to them the contents thereof,  
20 they did each acknowledge that they signed,  
sealed and delivered the same as their voluntary  
act and deed for the uses and purposes therein  
expressed.

ROBERT K. THISTLE  
A Foreign Commissioner of Deeds  
(SEAL) for New Jersey in New York.

30 Received in the Hudson Co. N. J. Clerk's Office  
Sept 4, 1925 and Recorded in Clerk's Record  
on page

John J. McGovern, Clerk.

Endorsed;

Filed and recorded Sep. 5, 1925,  
Thomas F. Martin,  
Secretary of State.

*Exhibit C. 4.*

STATE OF NEW JERSEY.

(Cut)

Department of State.

I, THOMAS F. MARTIN, Secretary of State of  
the State of New Jersey, Do HEREBY CERTIFY 10  
that the foregoing is a true copy of the Certifi-  
cate of Incorporation of Ritz Realty Corporation  
and the endorsements thereon, as the same is  
taken from and compared with the original filed  
in my office on the fifth day of September A. D.  
1925, and now remaining on file and of record  
therein.

IN TESTIMONY WHEREOF, I have hereunto set  
my hand and affixed my Official Seal at Trenton,  
this fifth day of September A. D. 1925. 20

(SEAL) THOS. F. MARTIN,  
Secretary of State.

**Exhibit C. 4.**

EDWARD D. NEWMAN  
Counselor at Law  
150 Broadway, New York 30  
Telephone Rector 5544

September 25, 1925

Eypper & Beckmann, Inc.,  
Palisade Junction,  
Palisade, New Jersey.

Dear Sirs:

Confirming the conversation had with your Mr.  
Beckmann to-day, I herewith advise you that we  
shall be ready to close the title to the premises 40

*Exhibit C. 5.*

in the Township of Teaneck, in the County of Bergen, State of New Jersey, the first tract of which is on the Teaneck Public Road, which said premises are under contract for sale by you to me under contract dated August 5th 1925, on  
 10 October 2nd 1925, at 2 P. M. and that in accordance with the understanding had by me with your Mr. Beckmann, to-day, that the title is to be closed at the time aforesaid at the office of the Peoples Trust & Guaranty Company of Hackensack, Hackensack, New Jersey.

Title will be taken by the Ritz Realty Corporation, a New Jersey Corporation, to whom the contract of sale above mentioned was assigned, and who will execute the purchase money mortgage as called for by the contract.

20

Very truly yours,

Edward D. Newman.

EDN:JK

**Exhibit C. 5.**

Sept. 30th, 1925.

30

EBvsN  
 Edward D. Newman, Esq.,  
 150 Broadway, New York City.

Dear Sir:

Your letter of the 25th instant addressed to Eypper & Beckmann, Inc. has been handed to me for reply.

In connection therewith, I beg to inform you in behalf of Eypper & Beckmann, Inc. that the alleged contract entered into by yourself and  
 40 Mr. Eypper in behalf of the Eypper & Beckmann,

*Exhibit C. 6.*

Inc. is hereby repudiated. Mr. Eypper was without authority to execute any contract for the sale of the corporation property and did so without consulting the officers and directors of the corporation. I might further state that Mr. Eypper was induced to attach his signature to  
 10 a contract for the sale of the premises involved upon mis-representation of certain facts.

I am, therefore, returning a check to your order for \$3,000.00.

Very truly yours,

B

DAVID N. POPIK

**Exhibit C. 6.**

20

October 7th, 1925

Eypper & Beckmann, Inc.,  
 Palisade Junction,  
 Palisade, New Jersey.

Dear Sirs:

This is to advise you that we shall be ready again to close the title to the premises in the Township of Teaneck, in the County of Bergen, State of New Jersey, consisting of approximately  
 30 twenty-seven acres, and the first tract of which is on the Teaneck Public Road, which you contracted to sell to Edward D. Newman, under contract dated August 5th 1925, on October 14th 1925 at your office at 3 P. M.

This contract was assigned to us by Edward D. Newman, and we shall be ready at the time and place aforesaid to comply with all the terms of the contract, and to execute the purchase

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*Exhibit C. 7.*

money mortgage and other instruments called  
for by the said contract.

Very truly yours,

RITZ REALTY CORPORATION

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By Morris Mehr  
President

**Exhibit C. 7.**

EDWARD D. NEWMAN  
Counselor at Law  
150 Broadway, New York  
Telephone Rector 5544

October 3rd, 1925

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David N. Popik, Esq.,  
Kinney Building,  
Newark, New Jersey.

Dear Sir:

I returned to-day to Eypper & Beckmann, Inc.,  
the check for Three thousand (\$3000.00) Dollars,  
dated September 28th 1925, drawn on the Edge-  
water Trust Company to my order.

This check was sent with your letter of Sep-  
30  
tember 30th 1925.

I also sent a letter to Eypper & Beckmann,  
Inc., with the return of this check for \$3000.00,  
a copy of which letter, I am sending to you en-  
closed herein.

Very truly yours,

Edward D. Newman.

EDN:JK

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*Exhibit C. 8.***Exhibit C. 8.**

EDWARD D. NEWMAN  
Counselor at Law  
Woolworth Building  
New York  
Telephone Whitehall 8262

10

October 3rd, 1925

Eypper & Beckmann, Inc.,  
Palisade Junction,  
Palisade, New Jersey.

Gentlemen:

Mrs. Mackay has answered the letter of Mr.  
David N. Popik, your attorney, to me, dated Sep-  
tember 30th 1925.

Supplementing the letter of Mrs. Mackay, I am  
20  
returning to you enclosed herein your check to  
my order for Three thousand (\$3000.00) Dollars,  
dated September 28th 1925, drawn on the Edge-  
water Trust Company, which check Mr. Popik  
sent me with his letter of September 30th 1925.

Very truly yours,

Edward D. Newman.

EDN:JK

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Exhibit C. 9.

Exhibit C. 9.

FOR VALUE RECEIVED, the amount and sufficiency whereof is hereby acknowledged, I hereby assign, transfer and set over unto the Ritz Realty Corporation, a New Jersey Corporation, its successor, successors and assigns, all my right, title and interest of, in and to the certain agreement, dated August 5th 1925 between Eypper & Beckmann, Inc., described therein as the seller and the undersigned, Edward D. Newman, described therein as the purchaser, for the sale of the tracts or parcels of land and premises fully and particularly described in the said agreement, situated, lying and being in the Township of Teaneck, County of Bergen, State of New Jersey, which said landed premises are the same premises conveyed to the aforesaid Eypper & Beckmann, Inc. by Conrad Gemmer and Anna Elizabeth Gemmer, his wife, by deed dated July 1st 1925, and recorded July 13th 1925, and hereby authorize and direct the said Eypper & Beckmann, Inc. to convey the said premises to the said Ritz Realty Corporation.

The said Ritz Realty Corporation hereby accepts this assignment and hereby assumes the performance of the said agreement and hereby agrees to fully carry out and perform the same.

WITNESS, the following signatures and seals this 23d day of September 1925.

RITZ REALTY CORPORATION

(L. S.) By M. Mehr  
President

(SEAL) EDWARD D. NEWMAN.

Attest

Jeanette Kaplan  
Secretary

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Exhibit C. 9.

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

BE IT REMEMBERED that on this 30th day of September in the year of our Lord, One Thousand Nine Hundred and Twenty-Five, before me the subscriber a A Foreign Commissioner of Deeds for New Jersey in New York personally appeared EDWARD D. NEWMAN, who I am satisfied is one of the parties mentioned in the foregoing instrument, to whom I first made known the contents thereof and thereupon he duly acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

ROBERT K. THISTLE  
A Foreign Commissioner of Deeds  
for New Jersey in New York.

STATE OF N.Y. }  
COUNTY OF N.Y. } ss.:

BE IT REMEMBERED that on this 30th day of September in the year of our Lord, One Thousand Nine Hundred and Twenty-Five, before me the subscriber a A Foreign Commissioner of Deeds for New Jersey in New York personally appeared JEANETTE KAPLAN and made proof to my satisfaction that she is the Secretary of the Ritz Realty Corporation, the corporation named in the foregoing instrument; that she well knows the corporate seal of the said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that the seal was so affixed and the said instrument signed and delivered by M. Mehr, who was at the date thereof of the president of said corporation, in the pres-

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*Exhibit C. 9.*

10 ence of this deponent and that said president at the same time acknowledged that he signed, sealed and delivered the same as his voluntary act and deed and as the voluntary act and deed of said corporation, and that deponent at the same time subscribed her name to said instrument as an attesting witness to the execution thereof.

JEANETTE KAPLAN.

Sworn and subscribed before me at New York, N. Y., the date aforesaid.

20 ROBERT K. THISTLE,  
A Foreign Commissioner of Deeds  
for New Jersey in New York.

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*Exhibit C. 10.*

**Exhibit C. 10.**

No. New York Aug. 3, 1925  
THE MECHANICS & METALS NATIONAL BANK  
Seventy Second Street Branch  
Pay to the order of Dr. S. Limenfeld \$500.00  
Five Hundred and 00/100.....Dollars 10  
Stanley Newman

(Endorsed on back)

Pay to the order of  
Eypper and Beckmann  
Dr. S. Limenfeld  
For Deposit  
Eypper & Beckmann, Inc.  
THE NEW YORK TRUST COMPANY  
100 Broadway 20

No. 1199 New York Aug. 5, 1925  
Pay to the order of Edward D. Newman \$2,500.00  
Twenty five hundred & 00/100.....Dollars  
Edward D. Newman  
Special Acct.

(Endorsed on back)

Pay to the order of  
Eypper & Beckmann Incorporated  
Edward D. Newman  
For Deposit 30  
Eypper & Beckmann Inc.

40

*Exhibits D. 1.—D. 2.*

**Exhibit D. 1.**

WESTERN UNION TELEGRAM  
Copy W U TELE

Nov 11 1925

Chg Fone Cliff 167 Check 11 wds Rate 64 cts

10

Union City N J Aug. 3/25.

Geo H Beckmann  
Care the Wigwam  
Lake Kiosh Koquia  
Alonqonquian Ontario

Did you offer Linenfels client farm at thir-  
teen hundred per acre

W. J. Eypper

20

**Exhibit D. 2.**

CANADIAN NATIONAL RAILWAYS  
RAILWAY SERVICE TELEGRAM

13 Collect Brent, Ont. August 12th, 1925;  
Eypper & Beckmann, Inc.

Palisade, N. J. U. S. A.

30 Quoted Limenfels Sixteen Hundred refused  
thirty six thousand from Smith Ridgefield Park.

Geo. H. Beckmann,

Sent "by" C/SD 913 Am.

40

*Exhibit D. 3.*

**Exhibit D. 3.**

Eypper & Beckmann, Inc.  
10 Abbott Boulevard  
Palisade, N. J.

55-352

10

EDGEWATER TRUST COMPANY  
Edgewater, N. J. Sept. 28 1925 No. 951  
Pay to the order of Edward D. Newman \$3,000.00  
Three Thousand 00/100 ..... Dollars

Eypper & Beckmann, Inc.

Wm. J. Eypper  
President  
Treasurer

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**OPINION OF VICE-CHANCELLOR.**

**IN CHANCERY OF NEW JERSEY.**

10	<p><i>Between</i> RITZ REALTY CORPORATION, <i>Complainant,</i>  <i>and</i> EYPPER &amp; BECKMANN, INC., <i>Defendant.</i></p>	<p><i>Opinion.</i> <i>On Bill,</i> <i>Pleadings,</i> <i>etc.</i></p>
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Mackay & Mackay for the complainant.  
Simon M. Seley for defendant.

20 LEWIS, V.-C.

The bill of complaint is for the specific performance of a certain contract for the sale of real estate located at Teaneck, New Jersey. The contract is dated August 5, 1925, and is made between Eypper & Beckmann, Inc., a New Jersey corporation, as the seller, and Edward D. Newman as the purchaser. The purchase price is \$35,373 (not in excess of \$1,300 per acre), upon which a deposit of \$3,000 is acknowledged, \$9,000 in cash or certified check was to be paid upon taking title and \$17,000 by the purchaser assuming a mortgage covering said property, and the balance was to be in the form of a purchase money mortgage. The title was to close at the office of Eypper & Beckmann, Inc., on November 5, 1925, at twelve o'clock or before, at the option of the purchaser, upon the giving of five days' notice in writing.

30  
40 The contract of sale was signed by Wililam J. Eypper, President, and by Edward D. Newman

as the purchaser. The description covers approximately twenty-seven acres of land.

The agreement was assigned by Edward D. Newman to Ritz Realty Corporation, the present complainant, which assignment is dated September 23, 1925, and is acknowledged on September 30, 1925.

The complainant in support of its claim showed in substance, through Mr. Edward D. Newman, the original purchaser mentioned in the contract of sale, that he is a lawyer, practicing in New York; that he bought this property from the defendant without ever inspecting it, and relied solely upon the representations made to made by one Lyminfeld and Mr. Newman's brothers; that he called at the office of Eypper & Beckmann, Inc., delivered a check of \$2,500, which sum, together with \$500 previously given by him to Lyminfeld, made the initial deposit of \$3,000 mentioned in the contract; that he made two corrections at the time of signing the agreement, one being that the balance of the purchase price may be paid by certified check, and the other that the purchase money mortgage may be given by the purchaser or his assigns.

He says that after the agreement was signed, he had a conversation with Mr. Beckmann, the secretary and treasurer of the defendant corporation, over the telephone, on September 25, 1925, and Mr. Beckmann told him that he was satisfied to give him the property and that he arranged a closing date with Mr. Beckmann; that he thereupon wrote a letter dated September 25th, confirming the conversation, and upon receiving a communication from the defendant's attorney, repudiating the agreement, and returning the \$3,000, he proceeded to make a tender in accordance with the terms of the agreement, and

*Opinion of Vice-Chancellor.*

such tender was made at the office of Eypper & Beckmann, Inc., on October 14, 1925.

Supporting his claim, he produced three witnesses, his two brothers and Lyminfeld. The two brothers testified in substance that the property was offered to them by Beckmann in the presence of Lyminfeld, at \$1,300 per acre, in the month of July, 1925. Lyminfeld also testified to the same state of facts. One witness, Kelly, testified that the property had gone up in value between August 5 and September 25, 1925, from \$1,300 to about \$2,700 per acre.

A letter was received dated September 30th from David N. Popik, repudiating the contract, which reads as follows:

“The alleged contract entered into by yourself and Mr. Eypper in behalf of the Eypper & Beckmann, Inc. is hereby repudiated. Mr. Eypper was without authority to execute any contract for the sale of the corporation property and did so without consulting the officers and directors of the corporation. I might further state that Mr. Eypper was induced to attach his signature to a contract for the sale of the premises involved upon misrepresentation of certain facts. I am, therefore, returning a check to your order for \$3,000.”

The defendant contends that it is a corporation consisting of four stockholders, who are Mr. and Mrs. Eypper and Mr. and Mrs. Beckmann, each family holding fifty per cent. of the stock. Mr. Eypper is the president and Mr. Beckmann is the secretary and treasurer. The corporation did not hold a meeting nor pass a resolution, nor has given any authorization to Mr. Eypper to make the agreement of sale. It further contends that Lyminfeld, who acted as the intermediary or broker in the transaction, was a friend of

*Opinion of Vice-Chancellor.*

Beckmann's, he having business and social connections with him for some time, and that upon the representations of Lyminfeld that Beckmann, who was then absent on his vacation in Canada, agreed to sell the property at \$1,300 per acre, and that Eypper not being able to locate Beckmann, after sending a telegram inquiring about the statements made by Lyminfeld, was induced by Lyminfeld to sign the agreement of sale. In support of the defendant's contention, a telegram was produced reading as follows: “Did you offer Lyminfeld's client farm at \$1,300 per acre,” signed William J. Eypper and dated August the 3rd, 1925.

On the day when the telegram was sent Eypper received a check of \$500 from Lyminfeld and did not deposit it until August 5, on which day the agreement of sale was made. Between August 3rd and August 5th, a report came in from the telegraph office to the effect that Mr. Beckmann could not be located, and Lyminfeld, in the meantime, was calling frequently on Eypper, insisting upon making the agreement, insisting that Beckmann had agreed to sell the property at \$1,300 per acre.

The purchaser called at the office on August 5th with an additional check of \$2,500, about two o'clock in the afternoon, and the agreement was thereupon drawn; that during that time, and before the consummation of the deal, Eypper sent down the \$500 check for deposit, and when the agreement was finished, it being after banking hours, the check of \$2,500 was deposited the next morning after the agreement was signed. A letter was thereupon sent by Eypper to Beckmann advising him of the deal, Beckmann being still in Canada on his vacation. He received the let-

*Opinion of Vice-Chancellor.*

ter about the 12th of the month and immediately sent a telegram to Eypper reading as follows: "Quoted Lyminfeld \$1,600; refused \$3,600 from Smith, Ridgefield Park," signed George H. Beckmann, and dated August 12, 1925.

10 Beckmann arrived from Canada on August 19th and sent for Lyminfeld. He offered to return the deposit and charged him with misquoting the purchase price, also telling him that he would not go through with the deal.

On September 25th he spoke to Edward D. Newman on the telephone and says that he informed him that he would not convey the property.

20 The testimony of Eypper and Beckmann was to the effect that Eypper had only authority to take care of financial matters, such as procuring mortgages and other incidental office work, but that he had no power to sell the corporate property, and that the selling of property was entirely under the supervision of Mr. Beckmann.

The certificate of incorporation together with the minute book and by-laws were offered in evidence, showing that no resolution or any authority was passed or given to Mr. Eypper, as president, to sell this property. Beckmann denied 30 offer<sup>ing</sup> said property at the rate of \$1,300 per acre, and insisted that his offer was at all times not less than \$1,600 per acre. This is flatly denied by the two brothers of Mr. Newman and Lyminfeld.

The only questions presented by this case are:

1. Was the execution and delivery of the contract by Eypper for and in the name of the defendant corporation binding upon the defendant?

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*Opinion of Vice-Chancellor.*

2. Is there any fact or circumstance which bars complainant's right to a decree for specific performance?

The defendant corporation is composed of William J. Eypper, holding one hundred and twenty-four (124) shares; Agnes N. Eypper, his wife, holding one (1) share; George H. Beckmann, 10 holding one hundred and twenty-four (124) shares, and M. F. Beckmann, his wife, holding one (1) share.

From the testimony I am convinced that Mr. Eypper and Mr. Beckmann are really partners in corporate form. Mr. Beckmann himself testified that when he was absent from the office he left the entire management and control of the corporate affairs with Mr. Eypper, the president. I am satisfied that Mr. Beckmann knew of 20 the dealings between Mr. Newman and Eypper & Beckmann, Inc., because he personally took Mr. Newman's brothers and Dr. Lyminfeld to the premises, showed them around and quoted the purchase price of \$1,300 an acre. It is a significant fact that Mr. Eypper, as the president, should issue a binder on August the 3rd, then execute the contract on August 5th, and hear nothing from Mr. Beckmann until August 12th, 30 when the alleged telegram was received from Canada, and then retain the \$3,000 deposit paid by Mr. Newman until September 30th, a period of approximately seven weeks.

In this case it is very evident that the desire to repudiate the contract is because the value had gone up in price.

The defendant has not in any manner whatsoever shown any fraud on the part of Newman or his agent; as a matter of fact, I am convinced that Dr. Lyminfeld was not Newman's agent, but 40

*Opinion of Vice-Chancellor.*

was the defendant's agent to endeavor to induce Newman to purchase the property on behalf of defendant, which he was successful in doing.

10 The minute book which was offered in evidence showed no record of any transactions, and in fact showed that there were no meetings either of the stockholders or directors of the corporation since June, 1924, which was the time when the corporation was organized. It is very apparent that from the time the corporation was formed, both Mr. Eypper and Mr. Beckmann had handled numerous real estate transactions, and nowhere does it appear that they ever called a directors' meeting or passed resolutions to have the contracts executed. I am of the opinion that complainant was relieved from making any formal tender by reason of the defendant's repudiating the contract on September the 30th.

20 The testimony satisfies me that the refusal of the defendant to carry out the contract is without justification whatsoever. Courts of equity do not favor corporations avoiding their contracts in this way. The president of the company had the apparent authority to bind it, and if any false representations were made the complainant did not make them. It would appear now that the defendants are trying to get out of the contract because the property has doubled in value.

I will advise a decree in accordance with these views.

*Final Decree.***FINAL DECREE.**

Filed June 3, 1927.

## IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>RITZ REALTY CORPORATION, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p>EYPPER &amp; BECKMANN, INCORPORATED, Defendants.</p>	}	<p>10</p> <p><i>On Bill, &amp;c., for Specific Performance.</i></p> <p><i>Final Decree.</i></p>
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This matter coming on to be heard in the presence of Mackay & Mackay, solicitors of the complainant, and Simon M. Seley, Esquire, solicitor of the defendant, and John Milton, Esquire, of counsel, and the Court having examined the pleadings and having taken proofs orally and in open court and heard and considered the argument of counsel thereon; and it appearing to the satisfaction of the Court that the defendant, Eypper & Beckmann, Incorporated, was on the fifth day of August, 1925, seized in fee simple of all that lot or parcel of land, with the buildings and improvements thereon, in the Township of Teaneck, County of Bergen and State of New Jersey, described as follows:

ALL those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Teaneck in the County of Bergen and State of New Jersey, and which are plotted, laid out and designated on a certain map on file in the Clerk's Office of the County of Bergen entitled "Map of Property of

*Final Decree.*

John V. H. Terhune, dec'd., Bergen Co., N. J., 1895, Willard Cass, C. E." and which in a certain deed made by Cornelius J. Terhune and wife to said Conrad Gemmer, which deed is dated August 10, 1896, and is recorded in the Bergen County Clerk's Office in Book 437 of Deeds, pages 137, &c., are described as follows:

THE FIRST TRACT, begins in the centre of Teaneck Public Road at a point where the center line of said road and the southerly line of lot number two intersect, from thence running (1) North thirty-three degrees five minutes East three hundred and seven and eight tenths feet to land of W. W. Phelps, thence (2) South sixty degrees and fourteen minutes East thirteen hundred and fourteen and four tenths feet, thence (3) South twenty-six degrees fifteen minutes west one hundred and fifty feet to the land of said Phelps, thence (4) North sixty degrees and thirty minutes West seven hundred and seventy-five feet, thence (5) South thirty-three degrees, fifteen minutes west two hundred and seventy-five feet, thence (6) South eighty-three degrees, fifteen minutes west sixty-seven feet, thence (7) North sixty-one degrees twenty-five minutes west eighty-five feet, thence (8) North fifteen degrees west twenty-one and seventy-four hundredths feet, thence (9) north ten degrees twenty-five minutes west one hundred and one and sixty-four hundredths feet, thence (10) north fifteen degrees twenty-five minutes West sixty-six feet, thence North sixty degrees ten minutes west two hundred and seventy-two feet and three tenths of a foot to the center of said road, and place of beginning. Containing four and nine tenths acres. Being plot number two (2) on said map.

THE SECOND TRACT, begins in the center line of Teaneck Public Road, where the same is inter-

*Final Decree.*

sected by the center of a lane dividing the premises being described, from lands of Benjamin Parker, from thence running (1) North thirty-three degrees five minutes east two hundred and ninety-three and seven tenths feet, thence (2) South sixty degrees ten minutes east two hundred and seventy-two and three tenths feet, thence (3) South fifteen degrees twenty-five minutes east sixty-six feet, thence (4) South ten degrees twenty-five minutes east one hundred and one and sixty-four one hundredths feet, thence (5) South fifteen degrees east twenty-one and seventy-four hundredths feet, thence (6) South sixty-one degrees twenty-five minutes east eighty-five feet to the center of the brook near the south end of the mill pond, thence (7) Down said brook its several courses to the center of said lane aforesaid, thence (8) North sixty degrees twenty-five minutes west six hundred and twelve feet to the center of the Teaneck Road aforesaid, being plot three on said map and containing three acres and five tenths of an acre.

Excepting and reserving therefrom, however, the following:

Beginning in the southwesterly corner of plot number three, at the intersection of the center lines of Teaneck Road and said lane, thence (1) Along the center line of Teaneck Road north thirty-three degrees five minutes east two hundred feet thence (2) South sixty degrees twenty-five minutes east three hundred and sixty-two and ninety-seven hundredths feet, thence (3) South ten degrees twenty-five minutes east forty-one and ninety-eight hundredths feet, thence (4) South eleven degrees twenty-five minutes east twenty-one and seventy-four hundredths feet, thence (5) South sixty-one degrees twenty-five minutes east seventy-nine feet, thence (6) South

*Final Decree.*

sixteen degrees twenty-five minutes east twenty-five feet, thence (7) North seventy-three degrees twenty-five minutes east seven feet, to the center of Brook, thence (8) Down said brook its several courses, to the center of said land aforesaid, thence (9) North sixty degrees twenty-five minutes west six hundred and twelve feet to the center of Teaneck Road aforesaid, the point of beginning. Containing two and thirty-six hundred and seventy-eight ten thousandths acres.

THE THIRD TRACT, beings in the southwesterly corner of the plot being described and in the line of lands of the estate of W. W. Phelps, thence running (1) North thirty-nine degrees and thirty-two minutes east three hundred and sixty-eight and eight tenths feet, thence south fifty-nine degrees six minutes east fifteen hundred and forty-one and seventy-five hundredths feet, thence South sixty-one degrees and six minutes east seven hundred and thirty feet, thence through the middle of a creek its several courses as on said map easterly, to the west side of Drainage Canal running from Englewood to the Overpeck Creek, thence returning to the beginning point and running south sixty-two degrees and twenty-two minutes East sixteen hundred and twenty feet, thence south fifty-eight degrees and forty-five minutes east twelve hundred and eighty feet to the west bank of said canal, and thence northerly along the west bank of said canal to the end of the fourth course and creek aforesaid, as shown on said map. Being plots five and six on said map. Plot five containing eleven acres and five thousand two hundred and ninety-five ten thousandths of an acre. Plot six containing eight acres and two hundred and seventy-three one-thousandths acres.

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*Final Decree.*

THE FOURTH TRACT, beginning in the southwesterly corner of said tract at a marked tree, and running thence (1) North twenty-six degrees fifteen minutes east one hundred and fifty feet, thence (2) South fifty-seven degrees forty-four minutes east three hundred and thirty-seven and four tenths feet, thence (3) South forty-eight degrees forty-three minutes west seventy-one feet, thence (4) South forty-four degrees and thirty-eight minutes west seventy-nine and two tenths feet, thence (5) North fifty-eight degrees twenty-nine minutes west two hundred and eighty-four and six tenths feet to the place of beginning. Being plot number four on said map and containing one acre and three hundred and seventy-five ten thousandths of an acre.

Being the same premises conveyed to said Cornelius J. Terhune by Jacob Terhune *et ux* by deed dated September 2, 1895 and recorded in the Bergen County Clerk's Office in Book 412 of Deeds, pages 65, etc.

Together with all the right, title and interest of said Cornelius J. Terhune in and to a certain right-of-way granted to him by John J. Phelps, William E. Bond and Thomas R. White, Executors of the last will and testament of William Walter Phelps, deceased, by a certain grant of right-of-way between lots four (4) and five (5) aforesaid, under agreement dated August 20, 1896, and subject to the conditions therein expressed."

Being the same lands conveyed to the aforesaid Eypper & Beckmann, Incorporated, by Conrad Gemmer and Anna Elizabeth Gemmer, his wife by deed dated July 1st, 1925 and recorded July 13th, 1925.

Together with all right, title and interest of the defendant, Eypper & Beckmann, Incorporated,

*Final Decree.*

of, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining said premises above described, to the center line thereof.

10 that on said fifth day of August, 1925, the said Eypper & Beckmann, Incorporated and one Edward D. Newman entered into an agreement in writing wherein and whereby said Eypper & Beckmann, Incorporated agreed to convey the said lands and premises by deed containing the usual covenants and of warranty on November 5, 1925, to the said Edward D. Newman, and the said Edward D. Newman agreed to pay therefor the sum of Thirty-five Thousand Three Hundred Seventy-two Dollars (\$35,372.00) (but not in excess of \$1,300.00 per acre) by the payment of  
 20 Three Thousand Dollars (\$3,000) which was paid at the execution of said agreement and by the payment of the remainder of the purchase price in the following manner: Nine Thousand Dollars (\$9,000) in cash or by certified check on the delivery of the deed; subject to a mortgage of Seventeen Thousand Dollars (\$17,000) a lien on said premises payable July 1, 1930, which the said Edward D. Newton agreed to assume; and the execution of a purchase money mortgage  
 30 in the sum of Six Thousand Three Hundred Seventy-two Dollars (\$6,372.00) to run for two years from date of delivery of said deed with stipulation that the mortgagor shall pay \$1,000.00 or more on account of principal for six months after the date thereof; said mortgage to contain a release clause stipulating that the mortgagee will release the tracts described as plots number 2 and number 3 on said map, upon payment of \$4,000.00 and all the remainder of the  
 40 property hereinbefore described upon payment of

*Final Decree.*

\$2,372.00, the said title to be passed on the fifth day of November, 1925, or before at the option of the purchaser.

And it further appearing that the said Edward D. Newman subsequently by assignment in writing duly assigned all his right, title and interest in said contract or agreement to purchase to the complainant, Ritz Realty Corporation;  
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And it further appearing to the satisfaction of the Court that on September 25th, the complainant, exercising its rights under the said contract and assignment, duly notified the defendant, Eypper & Beckmann, Incorporated, that it desired to complete the said contract on October 2nd, 1925, at the Peoples Trust & Guaranty Company of Hackensack, New Jersey, and that at the said  
 20 time and place, through its agents and servants, appeared and was ready and able to perform all the covenants and conditions of the said contract, and that the defendant, Eypper & Beckmann, Incorporated, its agents and servants, failed to appear, and that thereafter, and on October 7th, 1925, complainant again duly notified the defendant, Eypper & Beckmann, Incorporated, in writing, that it desired to carry out and complete the  
 30 said contract on October 14th, 1925, at the office of the defendant, Eypper & Beckmann, Incorporated, and that at said time and place, the complainant, through its agents and servants, appeared and was ready, able and willing to perform all the covenants and conditions of said contract.

And it further appearing to the satisfaction of the Court that the said defendant, Eypper & Beckmann, Incorporated, has refused and failed to perform the said agreement on its part, and  
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*Final Decree.*

that the said complainant, Ritz Realty Corporation, have always been and still are ready and willing in all things to comply with the terms of the said agreement on their part;

10 And the Court being of the opinion that the complainant is entitled to the specific performance of the aforesaid agreement as prayed for by them in their Bill of Complaint filed herein;

20 IT IS, on this 26th day of May, 1927 ORDERED, ADJUDGED and DECREED that the said agreement be in all things specifically performed by the said defendant, and the said defendant on the 2nd day of June, 1927, at the hour of ten o'clock in the forenoon at the office of Mackay & Mackay, 238 Main Street in the City of Hackensack, in the County of Bergen and State of New Jersey  
30 make, execute and acknowledge in due form of law and deliver to the said complainant a warranty deed duly executed and acknowledged by the said defendant, conveying to the said complainant the said lands and premises in fee, subject only to a mortgage of Seventeen Thousand Dollars (\$17,000) now a lien on said premises payable July 1, 1930, and at the same time the complainant pay to the defendant the sum of Nine Thousand Dollars (\$9,000) in cash or by  
40 certified check, and make, execute and acknowledge in due form of law and deliver to the said defendant a purchase money mortgage for the sum of Six Thousand Three Hundred Seventy-two Dollars (\$6,372.00) to run for two years from the date of the delivery of the deed with a stipulation that the mortgagor shall pay One Thousand Dollars (\$1,000) or more on account of principal every six months after the date thereof. Said mortgage to contain a release clause stipulating that the mortgagee will re-

*Final Decree.*

lease the tracts described as plots number 2 and number 3 on said map upon payment of Four Thousand Dollars (\$4,000), and all the remainder of the property hereinbefore described upon the payment of Two Thousand Three Hundred Seventy-two Dollars (\$2,372.00), and that the defendant, Eypper & Beckmann, Incorporated, deliver to the complainant at the same time aforesaid, possession of the said land and premises. 10

IT IS FURTHER ORDERED, that all taxes, rents, insurance, water rates and interest on mortgages, if any, be apportioned between the complainant and the defendant, Eypper & Beckmann, Incorporated, as of the date of the delivery of the said deed, to be delivered at the time and place hereinbefore provided, and that the defendant, Eypper & Beckmann, Incorporated, pay to the said complainant interest on the said sum of \$3,000.00, paid at the time of the execution of the said agreement hereinbefore set forth, at the rate of 6% from October 2nd, 1925, to the date of delivery of the said deed to be delivered as hereinbefore provided; and that the defendant, Eypper & Beckmann, Incorporated, pay in full any assessment against said lands and premises hereinbefore described, confirmed and entered, prior to the date of the delivery of the said deed. 20 30

IT IS FURTHER ORDERED, that the defendant Eypper & Beckmann, Incorporated, and all persons claiming under it, be and they hereby are barred and foreclosed of and from all interest or claim to the said premises hereinbefore described or any part thereof.

IT IS FURTHER ORDERED that the said defendant pay to the said complainant the costs of this suit to be taxed including a counsel fee of five 40

*Final Decree.*

hundred (\$500) Dollars which is hereby allowed to Mackay & Mackay, solicitors for the complainant.

10 IT IS FURTHER ORDERED that true but uncertified copies of this decree, and of said taxed costs be served on Simon M. Seley, solicitor of said defendant, within twenty days after the date hereof.

E. R. WALKER,  
C.

Respectfully advised,

VIVIAN M. LEWIS,  
V.-C.

20 We certify that the within is a true copy of original filed with Clerk in Chancery.

MACKAY AND MACKAY,  
Solicitors for Complainant.

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*Order Amending Final Decree.*

**ORDER AMENDING FINAL DECREE.**

IN CHANCERY OF NEW JERSEY.

Between RITZ REALTY CORPORATION, Complainant, and EYPPER & BECKMANN, Defendants.	}	On Bill, etc., for Specific Performance.	10
		Order Amending Final Decree.	

This matter being opened to the Court by Mackay & Mackay, solicitors for the complainant, and it appearing that the final decree in the above-entitled cause dated May 26, 1927, directed the defendant to appear on June 2, 1927, at ten o'clock in the forenoon, at the offices of Mackay & Mackay, Hackensack, Bergen County, New Jersey, to specifically perform the agreement referred to in the bill of complaint filed in this cause, and it further appearing that through inadvertence copy of said decree was not obtained from the Clerk in Chancery in time to notify the defendant of the time and place set for specifically performing said agreement:

30 IT IS on this 16th day of June, 1927, ORDERED that the final decree entered in the above-entitled cause be modified by extending the date set for the defendant to appear at the offices of Mackay & Mackay, 238 Main street, Hackensack, N. J., until Thursday, June 23, 1927, at the same time and place.

AND IT IS FURTHER ORDERED that a copy of said final decree, together with a copy of this order, both of which may be certified by the solicitors

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*Order Amending Final Decree.*

for the complainant as true copies, be served upon the defendant or one of its officers or agents, at least two (2) days from the date hereof.

AND IT IS FURTHER ORDERED that the said final decree in all other respects, remain in full force and effect.

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E. R. WALKER,  
C.

Respectfully advised,

VIVIAN M. LEWIS,  
V.-C.

We certify that within, is a true copy of original filed with Clerk in Chancery.

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MACKAY & MACKAY,  
Solicitors of Complainants.

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*Notice of Appeal.*

**NOTICE OF APPEAL.**

IN CHANCERY OF NEW JERSEY.

*Between*

RITZ REALTY CORPORATION,  
Complainant,

*and*

EYPPER & BECKMANN, INC.,  
Defendant.

*On Bill, etc.*  
*Notice of Appeal.*

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The defendant, Eypper & Beckmann, Inc., hereby appeals from the final decree and order amending final decree filed by the complainant, and from the whole and every part thereof, made in this Court in the above-entitled cause to the Court of Errors and Appeals in the last resort in all causes.

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SIMON M. SELEY,  
Solicitor for and of Counsel with  
Defendant, Eypper & Beckmann, Inc.

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*Amended Notice of Appeal.*

**AMENDED NOTICE OF APPEAL.**

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> RITZ REALTY CORPORATION, <i>Complainant,</i>  <i>and</i> EYPPER & BECKMANN, INC., <i>Defendant.</i>	}	<i>On Bill, etc.</i>  <i>Amended</i> <i>Notice of</i> <i>Appeal.</i>
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The defendant, Eypper & Beckmann, Inc., here-  
 by appeals from the final decree and order  
 amending final decree filed by the complainant,  
 and from the whole and every part thereof, made  
 by the Chancellor on the advice of Vice-Chan-  
 cellor Vivian M. Lewis in the above-entitled cause  
 to the Court of Errors and Appeals in the last  
 resort in all causes.

SIMON M. SELEY,  
 Solicitor for and of Counsel  
 with Defendant, Eypper & Beckmann, Inc.

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*Petition of Appeal.*

**PETITION OF APPEAL.**

**New Jersey Court of Errors and Appeals**

10	<i>Between</i> RITZ REALTY CORPORATION, <i>Complainant-Appellee,</i>  <i>and</i> EYPPER & BECKMANN, INC., <i>Defendant-Appellant.</i>	}	<i>On Appeal</i> <i>from the</i> <i>Court of</i> <i>Chancery.</i>  <i>Petition of</i> <i>Appeal.</i>	10
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To the Honorable Court of Errors and Appeals  
 in the last resort in all causes.

1. The petition of Eypper & Beckmann, Inc.,  
 the appellant in the above-stated cause, respect-  
 fully shows that petitioner finds itself aggrieved  
 by a final decree made in the Court of Chancery,  
 by his Honor, Edwin Robert Walker, Chancellor  
 of the State of New Jersey, bearing date the  
 26th day of May, 1927, and an amended final de-  
 cree bearing date the 16th day of June, 1927, and  
 filed in the said Court of Chancery under said  
 last mentioned dates, in a certain cause in said  
 Court of Chancery wherein the said Ritz Realty  
 Corporation was complainant and Eypper &  
 Beckmann, Inc., was defendant in this respect, to  
 wit: That the said decree orders, adjudges and  
 decrees that the agreement as set forth in the  
 bill of complaint be in all things specifically per-  
 formed by the defendant.

2. The complainant prayed in the bill of com-  
 plaint that the defendant execute a deed to the  
 premises therein more fully described. Your  
 petitioner humbly appeals from the decree of the

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*Petition of Appeal.*

Chancellor which decrees that the agreement as set forth in the bill of complaint be in all things specifically performed upon the following grounds:

10 (A) That the answer and the evidence and exhibits clearly indicate that the agreement of sale described in the complaint was made by the president of the defendant corporation without the authority of the Board of Directors.

20 (B) That Edward D. Newman who was the original party to the agreement and who assigned it to the complainant was informed and knew at the time the agreement was executed, that it was done without the authority of the Board of Directors of the defendant corporation and that it was conditionally delivered to him, subject to the approval and ratification of the Board of Directors and the stockholders of the defendant corporation and that by reason thereof, the said agreement was not acknowledged by the defendant corporation.

(C) That at no time did the defendant have dealings with the complainant.

30 (D) That the agreement provided that Edward D. Newman would assume a mortgage of seventeen thousand dollars then a lien on said premises and that at no time did the said Edward D. Newman offer to assume said mortgage; that the agent of Edward D. Newman influenced the president of the defendant corporation to execute the agreement and that by reason of the absence of one Beckmann who had charge of the sale of the property, the president was unable to ascertain the true facts regarding the representations of the agent of the said Edward D. Newman; that in fact and in truth the said Beckmann  
40 had refused a larger offer for the premises than

*Petition of Appeal.*

the amount described as the purchase price in the agreement of sale made by the defendant as vendor and the said Edward D. Newman as the vendee, which agreement is the subject of dispute.

(E) That the said decree of the Chancellor allows counsel fees and costs to the complainant, whereas the said decree should have been in favor of the defendant. 10

(F) That the complainant should have been denied the relief prayed for in the complaint for the reasons above-stated and that the Chancellor in granting specific performance, did not exercise the proper discretion.

Your petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed and set aside and for nothing holden and that your petitioner may have such other relief in the premises as to this equitable Court shall seem meet. 20

SIMON M. SELEY,  
Solicitor for and of Counsel  
with Defendant, Eypper and Beckmann, Inc.

30

40

*Answer to Petition of Appeal.*

**ANSWER TO PETITION OF APPEAL.**

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> RITZ REALTY CORPORATION, <i>Complainant-Respondent,</i> <i>and</i> EYPPER & BECKMANN, INC., <i>Defendant-Appellant.</i>	}	<i>Answer to          Petition of          Appeal.</i>
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The answer of the above-named respondent to the petition of appeal of the above-named appellant.

20 This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that a decree was on the 26th day of May, 1927, and an amended final decree bearing date the 16th day of June, 1927, made and entered in the Court of Chancery, in the cause for the purpose mentioned in the said petition, as is therein stated; but as to substance and form thereof, this respondent prays

30 to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decrees are agreeable to equity, and it prays that the same may be affirmed with costs to be adjudged to this respondent.

MACKAY & MACKAY,  
 Solicitors and of Counsel with the Respondent.  
 HOWARD MACKAY,  
 Of Counsel.

*Notice of Argument.*

**NOTICE OF ARGUMENT.**

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	<i>Between</i> RITZ REALTY CORPORATION, <i>Complainant-Appellee,</i> <i>and</i> EYPPER & BECKMANN, INC., <i>Defendant-Appellant.</i>	}	<i>On Appeal          from Court          of Chancery.            Notice of          Argument.</i>	10
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PLEASE TAKE NOTICE, that I shall move the argument of the above-entitled matter, to be holden before the New Jersey Court of Errors and Appeals at Trenton, New Jersey, on the 3rd Tuesday in October, 1927, at 10 o'clock in the forenoon or as soon thereafter as the Court can attend to the same.

Dated, October 19, 1927.

Yours respectfully,  
 SIMON M. SELEY,  
 Solicitor for Defendant-Appellant.

30

TO: MESSRS. MACKAY & MACKAY,  
 Solicitors for Complainant-Appellee.

Service of the within is hereby accepted as of time.

MACKAY & MACKAY,  
 Solicitors for Complaint-Appellee.

*Stipulation.*

**STIPULATION.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

*Between*

RITZ REALTY CORPORATION,  
*Complainant-Appellee,*

*and*

EYPPER & BECKMANN, INC.,  
*Defendant-Appellant.*

*On Appeal  
from Court  
of Chancery.*

*Stipulation.*

20

It is hereby stipulated by and between the parties hereto that the above-entitled cause be added to the list of causes for the October term of the New Jersey Court of Errors and Appeals and that the same be submitted on Brief by the respective parties.

MACKAY & MACKAY,  
Solicitor for Complainant-Appellee.

SIMON M. SELEY,  
Solicitor for Defendant-Appellant.

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**New Jersey Court of Errors and Appeals**

*Between*

RITZ REALTY CORPORATION,  
*Complainant-Respondent,*

*and*

EYPPER & BECKMANN, INC.,  
*Defendant-Appellant.*

**APPELLANT'S BRIEF.**

**Statement.**

The bill of complaint is for the specific performance of a certain contract for the sale of real estate located at Teaneck, New Jersey. The contract is dated August 5, 1925, and is made between Eypper & Beckmann, Inc., a New Jersey corporation as the seller, and Edward D. Newman as the purchaser. The purchase price is \$35,372.00 (not in excess of \$1,300.00 per acre) upon which a deposit of \$3,000.00 is acknowledged, \$9,000.00 in cash or certified check was to be paid upon taking title and \$17,000.00 by the purchaser assuming a mortgage covering said property and the balance was to be in the form of a purchase money mortgage. The title was to close at the office of Eypper & Beckmann, Inc., on November 5, 1925, at twelve o'clock or before, at the option of the purchaser upon the giving of five days' notice in writing.

The contract of sale was signed by William J. Eypper, president, and by Edward D. Newman as the purchaser. The description covers approximately 27 acres of land.

The agreement was assigned by Edward D. Newman to Ritz Realty Corporation, the present complainant which assignment is dated September 23, 1925, and is acknowledged on September 30, 1925.

The complainant in support of its claim showed in substance, through Mr. Edward D. Newman, the original purchaser mentioned in the contract of sale, that he is a lawyer practicing in New York; that he bought this property from the defendant without ever inspecting it and relied solely upon the representations made to him by one Lyminfeld and Mr. Newman's brothers; that he called at the office of Eypper & Beckmann, Inc., delivered a check of \$2,500.00 which sum together with \$500.00 previously given by him to Lyminfeld made the initial deposit of \$3,000.00 mentioned in the contract; that he made two corrections at the time of signing the agreement, one being that the balance of the purchase price may be paid by certified check and the other that the purchase money mortgage may be given by the purchaser or his assigns.

He says that after the agreement was signed, he had a conversation with Mr. Beckmann, the secretary and treasurer of the defendant corporation, over the telephone on September 25, 1925, and Mr. Beckmann told him that he was satisfied to give him the property and that he arranged a closing date with Mr. Beckmann; that he thereupon wrote a letter dated September 25, confirming the conversation and upon receiving a communication from the defendant's attorney repudiating the agreement and returning the \$3,000.00, he proceeded to make a tender in accordance with the terms of the agreement and such tender was made at the office of Eypper & Beckmann, Inc., on October 14th.

Supporting his claim, he produces three witnesses, his two brothers and Lyminfeld. The two brothers testified in substance, that the property was offered to them by Beckmann in the presence of Lyminfeld at \$1,300.00 per acre in the month of July, 1925. Lyminfeld also testifies to the same state of facts. One witness, Kelly, testified that the property had gone up in value between August 5 and September 25, 1925, from \$1,300.00 to about \$2,700.00 per acre.

The defendant, on the other hand, contends that it is a corporation consisting of four stockholders, who are Mr. and Mrs. Eypper and Mr. and Mrs. Beckmann, each family holding 50% of the stock. Mr. Eypper is the president and Mr. Beckmann, the secretary and treasurer. The corporation did not hold a meeting nor pass a resolution nor had given any authorization to Mr. Eypper to make the agreement of sale. It further contends that Lyminfeld who acted as the intermediary or broker in the transaction, was a friend of Beckmann, he having business and social connections with him for some time and that upon the representations of Lyminfeld that Beckmann, who was then absent on his vacation in Canada, agreed to sell the property at \$1,300 per acre and inasmuch as Eypper was not able to locate Beckmann, after sending a telegram inquiring about the statements made by Lyminfeld, signed the agreement of sale upon such representations.

In support of the defendant's contention, a telegram was produced marked Exhibit "D. 1" reading as follows: "Did you offer Lyminfeld's client farm at \$1300.00 per acre," signed William J. Eypper and dated August 3, 1925.

On the day when the telegram was sent, Eypper received a check of \$500.00 from Lyminfeld and did not deposit it until August 5th, on which day, the agreement of sale was made. Between August 3rd and August 5th, a report came in from the telegraph office to the effect that Mr. Beckmann could not be located and Lyminfeld, in the meantime was calling frequently on Eypper insisting upon him making the agreement, and stating that Beckmann had agreed to sell the property at \$1,300.00 per acre.

The purchaser called at the office on August 5th with an additional check of \$2,500.00 about two o'clock in the afternoon and the agreement was thereupon drawn; that during that time and before the consummation of the deal, Eypper sent down the \$500.00 check for deposit and when the agreement was finished, it being after banking hours, the check of \$2,500.00 was deposited the next morning after the agreement was signed. A letter was thereupon sent by Eypper to Beckmann advising him of the deal, Beckmann being still in Canada on his vacation. Beckmann received the letter about the twelfth of the month and immediately sent a telegram to Eypper, defendant's Exhibit "2," reading as follows: "Quoted Lyminfeld \$1600; refused \$36,000 from Smith, Ridgefield Park," signed George H. Beckmann and dated August 12, 1925.

Beckmann arrived from Canada on August 19th or 20th and sent for Lyminfeld. He offered to return the deposit and rebuked him for misquoting the purchase price, telling him that he would not go through with the deal. On September 25th, he spoke to Edward D. Newman on the telephone and likewise informed him that he would not convey the property and asked whether Lyminfeld had not so informed him.

The following day, he received the letter from Mr. Newman which is supposed to confirm an arrangement to give the property to the purchaser. The letter was received by Beckmann on September 26th, a Saturday. The 27th was Sunday and on September 28th, Monday, he consulted his lawyer who advised him to draw a check for \$3,000 which he did on that day and delivered it to his lawyer who forwarded it to Mr. Newman on October 1st.

The testimony of Eypper and Beckmann, in substance was to the effect that Eypper had only authority to take care of financial matters, such as procuring mortgages and other incidental office work but that he had no power to sell the corporate property and that the selling of property was entirely under the supervision of Mr. Beckmann.

The certificate of incorporation together with the minute book and by-laws were offered in evidence, showing that no resolution or any authority was passed or given to Mr. Eypper as president to sell this property. Beckmann denied offering said property at the rate of \$1,300 per acre and insisted that his offer, was at all times, not less than \$1,600.00 per acre. Eypper insisted that he delivered the agreement to Lyminfeld and Newman with the express understanding that he was doing it upon his own responsibility because he believed in Lyminfeld's professed friendship with Beckmann. It is apparently conceded that Lyminfeld in this instance, acted as broker for both parties.

## POINT I.

The law disregarding fraud or any other extraneous facts, is that a president of a corporation has no power to sell or encumber real estate and an agreement of sale, without a resolution by the board of directors or express authority given to the president in the by-laws or by the board of directors, is not binding upon the corporation.

The case of *Whitall Stokes v. The New Jersey Pottery Company*, 46 New Jersey Law, page 238, is perhaps the leading case on this point in this State. It was held that the president had no authority to execute a bond and warranty of attorney even though the president was the holder of all but two shares in the corporation. The court said, "The reasoning which the cases cited were decided applied to the case now before the court. The plaintiff by his judgment and the execution thereon, has acquired a lien on all the property of the corporation, and I cannot find in principle any distinction between a mortgage or conveyance of the lands of a corporation and a judgment upon bond and warranty of attorney upon which the property, real and personal, of the corporation. Such a transaction is not within the ordinary business of a corporation, which the president, as its executive officer, is, in virtue of his office, authorized to transact.

The cases cited were *Titus v. Cairo and the Fulton R. R. Co.*, in which Mr. Justice Van Syckle summed it up in this manner. "In the absence of anything in the act of incorporation bestowing especial power upon the president, he has, from his mere official station, no more control over the corporate property and funds than any other director. The affairs of corporate bodies are within the exclusive control of their boards

of directors and from whom authority to dispose of their assets must be derived. The act of a president or other officer, unless it is shown to pertain to his official duty or to be within the scope of his employment, cannot be regarded as the act of the corporation, and is not binding upon. The authority requisite to charge the company must therefore be derived from the board of directors. 8 Vroom 98-102.

The other case is *Leggett v. New Jersey Banking Co.*, Saxt. 541, in which it was held that a mortgage executed by the president and cashier under the corporate seal, without the authority or concurrence of the board of directors, was not a valid instrument.

It will be recalled that Eypper, the president, testified that he was in charge of financial matters and procuring of mortgages (testimony, pp. 42, 43 and 44). In this regard, Judge Depue in the Stokes case, *supra*, says:

"A general agent of a corporation, who, in virtue of the authority given him, has the power to contract debts and even to borrow money on the credit of the corporation, has no power, in virtue of such an agency merely, to make a mortgage on its property, real or personal." *Stow v. Wyse*, 7 Conn. 215; *C. & N. R. R. Co. v. James*, 14 Wis. 325.

The following New Jersey cases amply support the above doctrines: *Raub v. Blairstown Creamery Association*; *Cook v. Blairstown Creamery Association*, 56 New Jersey Law 262; *Bennett v. Keen, Rec'r*, 59 New Jersey Equity, page 634; *Beach, Rec'r v. Columbia Real Estate Co.*, 86 New Jersey Law, page 238.

Considerable stress was made by the complainant-respondent in the court below on the subject of implied authority of the president to

execute an agreement of sale. It is contended by the complainant that the defendant is a real estate corporation, buying and selling real estate as a commodity.

It is very apparent that this assumption is without foundation. There is nothing in the testimony to show that the defendant is exclusively in the real estate business. The certificate of incorporation of Eypper & Beckmann, Inc., gives it the opportunity of engaging, among other things, in the real estate business. Its objects are numerous, consisting of purchasing, leasing and exchanging property, the construction and preparation of building sites, the management of lands and buildings, the collection of rents and incomes, the taking over of concerns of any kind, financing builders, acting as agents or brokers in buying, selling stocks, bonds, mortgages, debentures and other securities, the management of estates, and to act as agents in the marine, fire and automobile business.

How, then, can it be said that defendant's business is solely real estate and that the sale thereof its chief commodity? Nor do the facts of the present case come within the decision as cited by complainant in the court below in the case of *Kuebler Foundries v. Koehler Motors Corporation*, 100 New Jersey Law 163, for there is nothing here to show that the president Eypper was acting within the scope of his employment or apparent authority. On the contrary, it is distinctly testified to by both Eypper and Beckmann that the president had no right to execute agreement for the sale of real estate; that the duties of supervising sales were those of Mr. Beckmann and that even a sale made by Mr. Beckmann for the sale of real estate would have to be agreed upon and signed by

both the president and treasurer of the corporation (see testimony, pp. 22, 23 and 44).

Nor does this case come within the principle of estoppel, for in those cases, it is held that the authority of the officer does not depend so much on his title or on the theoretical nature of his office as on the duties he is in the habit of performing. *Stokes v. New Jersey Pottery Co.*; *Martin v. Webb*, 110 U. S. 7; *Commercial Ins. Co. v. Union Mutual*, 19 How. 318; *Mining Co. v. Anglo-Californian Bank*, 14 Otto 192; *Taylor on Corp.*, paragraphs 202, 236 and 244; *Murphy v. Crane*, 82 N. J. Law 557. The testimony here shows conclusively that Mr. Eypper's duties were never enlarged beyond the powers originally delegated to him. The fact that Mr. Eypper was left in charge of the defendant's business, cannot be construed to enlarge his powers other than to see that the business of the corporation continued in a normal manner. The testimony shows conclusively by the records and action of the corporation that his powers were always limited, so that the execution of the agreement by the president of the corporation, is not binding upon it.

## POINT II.

### Misrepresentation by Lyminfeld is binding upon the complainant-respondent.

Dr. Lyminfeld was a mutual friend of Mr. Beckmann and Mr. Newman and acted as a broker in this transaction. The position in which Dr. Lyminfeld, a dentist, stood in relation to these two parties, reveals the following: Quoting from the testimony, on page 44.

Q When did you get back to Jersey? A It was after the fifteenth, probably around the eighteenth or nineteenth.

Q Of August? A Of August.

Q Before leaving Canada, did you receive any other message besides the letter from Eypper? A No.

Q Now, when you got back around the eighteenth or nineteenth of August, what did you do? A After discussing the situation with Mr. Eypper, I decided to call Mr. Liminfeld over for the purpose of telling him that I didn't intend to go through with the contract.

Q What did you do? A Mr. Liminfeld was called up and told to come to our office.

Q How long had you known Mr. Liminfeld? A For two or three years.

Q Knew him well? A I knew him fairly well.

Q Socially and in a business way? A Yes.

Page 11 of the testimony, by Mr. Newman.

Q And Doctor Liminfeld is the one who described this property to you? A Yes, sir.

Q And he told you the probable value of the property? A Yes, sir.

Q And its taxation value? A Yes, sir.

This shows conclusively that Newman, the purchaser bought the property relying upon his own confidential agent, Lyminfeld.

The testimony of the defendant shows that Lyminfeld took advantage of Beckmann's absence and persuaded Eypper to sign the agreement of sale. Especially was his insistence the greater when he learned that Mr. Beckmann could not be located by telegram in Canada. Lyminfeld's action is chargeable to Newman and as Mr. Eypper has testified that if it were not for Lyminfeld's insistence, he would not have signed the agreement. The testimony further shows that after Beckmann's arrival, there

was a formal repudiation of the agreement made by Eypper & Beckmann, Inc., to Lyminfeld, offering the return of the deposit and the cancellation of the agreement which Lyminfeld refused so that the misrepresentations by Lyminfeld and the repudiation to Lyminfeld are both chargeable to Newman and also the complainant-respondent.

In the case of *Friedlander v. Lehr*, decided in August, 1926, the facts were briefly as follows:

A deposit was given to one Dare for the purchase of some property and he secured a signed agreement by the vendor (Lehr) and his wife wherein the sum of \$500 was acknowledged as a deposit and delivered the agreement to the purchaser (Friedlander). Dare retained the deposit for several weeks and then offered to pay it to the vendor who thereupon repudiated the agreement. *V. C. Ingersoll* said:

"The testimony leaves no doubt that Dare was acting as Friedlander's agent during the entire negotiations. Under these facts, and that no actual payment was made by Friedlander, he was bound so see that his agent made the payment to Lehr, which he (Friedlander) says he authorized Dare to make.

While it is clear that under other circumstances, Friedlander would be under no obligation to see to the application of money paid on account of the consideration of an agreement of sale, his knowledge of the existing anomalous position of Dare put him upon guard and imposed upon him that duty.

I am satisfied that the facts as proven do not entitle the complainant to a decree for specific performance."

The facts in the present instance are not on "All fours" with the case just cited. However, they do approach it very closely in this re-

spect. Dr. Lyminfeld, it may be admitted, was the agent of the defendants, in selling the property at Teaneck, but at the same time, he was also the agent of the complainant, who turned over to him the funds to bind the bargain. And that is exactly the position in which the parties stood in the Friedlander case, *supra*, and it was there held that the purchaser was bound by any act of the broker.

Defendant-appellant therefore submits that the repudiation of the alleged contract was given promptly to the complainant, see testimony page 45.

### POINT III.

#### Specific performance should be denied.

The remedy of specific performance is discretionary. *Plummer v. Keppler*, 26 Eq. 481, cited recently in the case of *Gluck v. Rynda Dev. Co.*, 134 Atl. 363.

The attention of the court is directed to the quality of the testimony. It is true that complainant's witnesses were more numerous than those of the defendant but an analysis of the testimony clearly indicates that Newman, his two brothers and Lyminfeld, in a stereotyped manner, testified as to the original quoting of the price of the property offered by Beckmann and as to their disinterestedness in the Ritz Realty Corporation, the assignee of the agreement. When the agreement was finally drawn, Mr. Edward Newman testified that he was present and made some changes in the contract. Mr. Newman is a New York attorney and his changes or additions to this contract are of noteworthy significance. The balance of the purchase price

was to be in cash. This was changed to cash or certified check. Another provision which was added was that the purchase money bond and mortgage was to be given by the purchaser or *his assigns*. The agreement was later assigned by Mr. Newman to the complainant and the clause "the assignee assumes the conditions of the said agreement" was inserted in the assignment. Mr. Newman testified (page 14) that the corporation was formed solely for the purpose of taking title to the premises and was incorporated for fifteen thousand (\$15,000) dollars, of which twelve thousand was paid in. This amount is the amount which was to be paid on the closing of title, viz: \$3,000 on deposit and \$9,000 on the closing day. It would appear therefore that the contract was assigned to the present complainant without any consideration whatsoever being paid to Edward D. Newman for the assignment. Despite this testimony, Mr. Newman and his brothers repeatedly testified that they had no interest in the corporation.

This is not a truthful story, for Mr. Newman and his brothers are much too interested in the outcome of the present controversy. And Mr. Newman manifested an exceptional interest prior to and during the consummation of the agreement. It would be difficult to believe that Mr. Newman, not acting as the complainant's attorney in the transaction, would be so careful in making the changes and additions to the contract, were it not for the fact of his own interest therein. Mr. Newman's untruthfulness is born out by his testimony. He testified (pp. 4 and 5) that he knew the voice of Mr. Beckmann on September 25, 1925.

Under cross examination, he admitted that the first time he heard Mr. Beckmann's voice, was on October 14th, the month following.

As to the price which Mr. Newman's brothers testified the property was offered to them, viz, \$1,300 per acre and that they were satisfied (pp. 61 and 64) to take it at that price without trying to obtain it for less, ought to convince the court that the property had never in fact, been offered to them for this price. Common experience teaches us that purchasers of property would at least make some effort to obtain it for a cheaper price before paying the amount asked by the owner. Besides, Mr. Beckmann's telegram from Canada, already referred to, shows that the property could not have been offered for \$1,300 per acre when \$1,333.33 per acre was already refused from one Smith of Ridgefield Park (telegram quotes \$36,000 for 27 acres.)

The letter written by Newman to Eypper and Beckmann dated September 25th is purely a case of an astute lawyer attempting to create a record. As it was said in the case of *Reade v. McKenna*, 134 Atlantic, 371.

"Both sides lay considerable stress on the letter of August 18th, 1925, addressed by complainant to the defendant; but this letter, as I view it, is an attempt to restore a lost cause."

The complainant produced a witness named Kelly who testified that the property had advanced in value between August 5th and September 25th from \$1,300 to \$2,700 an acre (see testimony p. 54). Newman contends that on September 25th, he had a conversation with Beckmann wherein Beckmann without any hesitancy offered to let him have the property and as a result thereof, he sent the letter of September

25th confirming this arrangement. Beckmann, on the other hand, contends that he did have a conversation with Newman on that date but that he told Newman that the contract was off, repudiating it and inquiring whether Lyminfeld had not informed him so (see testimony p. 47).

Which story is more plausible? Is it logical to assume that Beckmann, considering the irregularity of the sale, the aggravation that it caused him, would offer the property to Newman when there was such a large increase in its value, thus giving away approximately \$35,000 (the difference between the sale price and the alleged increased value of the property)? It must be remembered that the strongest evidential facts in this entire controversy are established by the two telegrams. They are surely authentic. One telegram was sent on August 3rd and reads as follows: "Did you offer Lyminfeld's client farm at \$1300 per acre," signed W. J. Eypper. Beckmann could not be located; Lyminfeld took advantage of this, calling upon Eypper repeatedly, pressing him; Eypper holding the check of \$500 until August 5th without knowing how to act and finally persuaded by Lyminfeld to close the deal. The contract is drawn and Eypper delivers it upon his own responsibility (see testimony pp. 28 and 29). He writes to Beckmann informing him of the sale. Beckmann wires back on the 12th as follows: "Quoted Lyminfeld \$1,600; refused \$36,000 from Smith, Ridgefield Park," signed George H. Beckmann. Beckmann returns on August 19th or 20th and repudiates the sale immediately.

In conclusion, the attention of the court is again directed to Newman's actions. As above pointed out, he was extremely careful to secure a good contract. He made two important changes

that a layman would not have thought of, viz: "Cash or certified check," and the right of the assignee to execute the purchase money mortgage. He then prepared an assignment from himself to a new corporation and inserted therein that the assignee assumed all the obligations contained in the contract. Upon the witness stand he gave testimony regarding the tender as follows: (from pp. 17 18 and 19.)

Q Did you offer Eypper & Beckmann, at the time of the closing of the title, that you would assume payment of the seventeen thousand dollars? A I offered to go through with the contract in every respect.

Q Did you personally offer to assume the payment of the seventeen thousand dollars, pursuant to the contract? A I offered to close the title, pursuant to the contract.

Q Did you tell him you were ready to assume payment of the seventeen thousand dollar mortgage? A I told him I was ready to go through with the contract.

Q Did you offer to assume the payment of the seventeen thousand dollar mortgage?

Mr. Mackay: I object, etc.

The Court: I will allow it, etc.

Mr. Seley: Here is a skeleton of a corporation, etc.

The Witness: I told Mr. Beckmann, etc.

Q I ask this question, and I want an answer to it. Did you personally agree to assume the seventeen thousand dollar mortgage, yes or no? A I will say yes, because I was there and I was ready and the Ritz Realty Corporation was ready.

*By the Court.*

Q Were you ready?

Mr. Mackay: I object, etc.

Q Did you expressly agree to assume the payment of the mortgage? A *I did not*, in express words.

This testimony as well as the actions of Mr. Newman clearly indicate his astuteness and cleverness. If he had taken all these extraordinary precautions, there is one question which remains unanswered and that is:

Why wasn't the agreement of sale acknowledged?

The first thing a lawyer would do would have been to request an acknowledgment of the contract. The answer cannot be given by Newman but it is given by Eypper when he says (p. 28 of the testimony), "Why, Mr. Newman wanted to know if the secretary was present to attest it, and I said I was acting simply on my own responsibility and because of Lyminfeld's professed friendship with Beckmann; etc."

Should the court assist a corporation organized by this same lawyer, a mere shell, and in which company he claims to have no interest or should the court using its discretion in justice to both parties decline specific performance.

It is respectfully submitted that the court below did not exercise the proper discretion in advising a decree for the complainant-respondent.

Respectfully submitted,

SIMON M. SELEY,

Solicitor for Complainant-Respondent.

*DEFENDANT-APPELLANT*

## New Jersey Court of Errors and Appeals

Between

RITZ REALTY CORPORATION,  
*Complainant-Respondent,*

and

EYPPER & BECKMANN, INC.,  
*Defendant-Appellant.*

On Appeal  
from the  
Court of  
Chancery.

### **BRIEF OF COMPLAINANT-RESPONDENT.**

In the summer of 1925, Eypper & Beckmann, Inc., the defendant-appellant, owned a tract of approximately twenty-seven acres in the Township of Teaneck, Bergen County, New Jersey. The defendant corporation consisted of Messrs. Eypper and Beckmann and was engaged in the real estate business.

One of their friends, Doctor Lymenfeld, a dentist, also dabbled in real estate, and as their broker and agent undertook to bring about a sale of this tract for them.

The first time Dr. Lymenfeld met Mr. Edward D. Newman, a New York lawyer, he described the property to Mr. Newman and attempted to interest him in it. Mr. Newman sent his two brothers Stanley Newman and Arthur Newman to look at the property and investigate the matter, and after they had gone over the property with Mr. Beckmann and made their report, Mr. Edward D. Newman, without himself ever having seen the

property, went to defendant's real estate office on August 5th, 1925, and for the first time met Mr. Eypper, and entered into the contract in question (Exhibit A, attached to the bill of complaint, p. 8). The contract specified a purchase price of \$35,372.00 (but not in excess of \$1,300.00 per acre) and provided for the closing of title at the office of Eypper & Beckmann, Inc., at 12 o'clock, November 5th, 1925, or before, "at the option of the purchaser, by giving five days' notice in writing."

A deposit of \$500.00 having previously been paid by one of Mr. Newman's brothers to Dr. Lymanfeld, a further deposit of \$2,500.00 was paid upon the signing of the contract.

The contract further provided that "the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties," and by written assignment dated September 23rd, 1925, Mr. Edward D. Newman assigned his said contract to the complainant, Ritz Realty Corporation (Schedule B, attached to the bill of complaint, p. 16).

After the signing of the contract and before the date therein fixed for the closing of title, the property more than doubled in value (perhaps because of the proposed bridge across the Hudson). Defendant has refused to perform the contract on its part, and in its amended answer (p. 26) to the bill of complaint it alleges four grounds as a basis for its repudiation of the contract, viz.:

(1) That Mr. Eypper, who as President signed the contract for and on behalf of the defendant had no authority to do so, and that the contract was not authorized by defendant's Board of Directors, and is therefore, null and void.

(2) That Dr. Lymanfeld, acting as the agent of Edward D. Newman, represented to Mr.

Eypper that he had made an arrangement with the other stockholders and directors of the defendant corporation, whereby the property in question was to be sold by the defendant to Edward D. Newman for \$35,372.00; that in reliance upon said representation Mr. Eypper as President of the defendant executed the contract; that subsequently Eypper consulted the other stockholders and directors of defendant and was informed that no such arrangement had been made with Edward D. Newman and that thereupon the defendant repudiated the act of its President and so informed complainant.

(3) That at no time did defendant have any dealings or transactions regarding the premises with the complainant (Ritz Realty Corporation), "and by reason thereof this defendant will resist specific performance prayed for by complainant."

(4) That the agreement provided that Edward D. Newman would assume a mortgage of \$17,000 then a lien on the premises; and that at no time did said Newman offer to assume said mortgage; "and that by reason thereof complainant is not entitled to the prayer for specific performance."

Three-fourths of the record is devoted to what is alleged to have taken place between the two men who constituted the defendant company and between them and their agent Dr. Lymanfeld, none of which transpired either in the presence of or to the knowledge of the purchaser Edward D. Newman or the purchaser's assignee, Ritz Realty Corporation. We submit that all that part of the record is a smoke screen that must be blown away before the simple, clear-cut case presented by such of the evidence as is relevant, material and competent can be seen for what it really is. *The case must be determined according to the relations*

*and dealings between the parties to the contract.* All evidence of what took place between Eypper, Beckmann and Lymenfeld in the absence and without the knowledge of complainant or its assignor or their representatives can be considered only in so far as it constitutes admissions against the defendant. In so far as it is merely self-serving, it must be ignored. To clear away the smoke screen let us analyze the evidence of what transpired *between the parties.*

**As to the Form and Organization of Defendant Corporation.**

First we must consider the vendor corporation—who and what was it that the purchaser was dealing with? It was Eypper and Beckmann carrying on a partnership business in corporate form. They had contributed equally to the capital and held equal shares (p. 63, line 30). There were no other stockholders except their respective wives, each of whom held one share, but the wives were admittedly “dummies.” They had no real interest, and must be deemed and taken to have assented to and to be bound by whatever Eypper and Beckmann did in respect to the business of the corporation.

“By the Court (Eypper, p. 48, line 38):

“Q. How much money did you put in Eypper & Beckmann? A. About \$1,500.

“Q. And how about Beckmann? A. The same.

“Q. And how about your wives, or were they dummies? A. They were dummies.

“Q. And so you and Beckmann controlled it? A. Yes.

“Q. And that is the corporation? A. Yes.”

Eypper was designated as president and Beckmann as secretary and treasurer (p. 47, line 34).

There is no evidence that they ever engaged in anything else than real estate business. Beckmann says (p. 65, line 18): “We have had sales of small property—houses and lots.” In urging Mr. Arthur Newman to buy the property he said (p. 81, line 13): “You will be my client, and you will come over here and we will make further commissions on other deals.” Lymenfeld says (p. 74, line 34), that he “often stopped in the real estate office” and talked with Mr. Beckmann about property. The minute book discloses that after the formalities of organization had been gone through at the time they were incorporated, they made no further pretense of keeping up corporate formalities. It was their business, its property was solely theirs, and they dealt with it accordingly. Each signed company checks without the countersignature of the other (top p. 70). When one was away the other had charge of the office (p. 70, line 36).

**Lymenfeld was Defendant's Agent and Representative.**

Dr. Lymanfeld says, “I represented Eypper & Beckmann” (p. 76, line 14). He resided at Palisade Junction (p. 74, line 21), where Eypper & Beckmann had their real estate office (p. 38, line 17) and had known Mr. Beckmann “for two or three years,” “socially and in a business way” (Beckmann, p. 66, line 29). He says (p. 74, line 33), “During that summer my family was away and I often stopped in the real estate office and he (Beckmann) spoke to me about this property, and he was very enthusiastic about it, and he told me I could make a little money for myself. If I could sell it for \$1,300, I would get 2½%.”

The purchaser, Mr. Edward D. Newman, lives in New York City (p. 30, line 37). Nowhere in the record does it appear that Mr. Lymanfeld ever had

any dealings with the purchaser or with the purchaser's brothers prior to the time when he says (p. 75, line 2): "I met Mr. Newman at a lodge meeting, and I told him about it, and he told me that he would get in touch with me during the week and see if he could come out and look at it." He described the property to Mr. Edward D. Newman and tried to interest him in it (Ed. D. Newman, p. 38, line 19). He received no compensation or promise of compensation from the purchaser (p. 45, line 12, Ed. D. Newman). When the contract was signed Mr. Eypper paid him \$500 on account of his commission (Eypper, p. 52, line 32) and as Dr. Lymenfeld says (p. 76, line 18): "Promised me the rest when title was taken." As was observed by the Court (p. 52, line 36) certainly Mr. Eypper did not give the \$500 to Dr. Lymenfeld as a present.

Nothing could be clearer than that under these circumstances whatever Dr. Lymenfeld did to bring about the sale he did as the agent and representative of Eypper & Beckmann. There is nothing in the record to indicate that he had any authority to or did in any way act for or represent the purchaser.

Appellant's brief (top p. 12) states: "Dr. Lymenfeld, it may be admitted, was the agent of the defendant in selling the property at Teaneck."

**As to the Showing of the Property in July.**

Dr. Lymenfeld says (p. 75, line 10) that in July, after his aforesaid first mention of the property to Mr. Edward D. Newman, "he called me up and said he couldn't get out, but he would send his two brothers out, who I had met at the seashore, and they came out and we went to Mr. Beckmann's office and we all went out to the property," and that Mr. Beckmann said at that time that the price

was \$1,300 an acre. Mr. Stanley Newman (p. 79, line 12) says that Mr. Beckmann repeated several times that the price was \$1,300 an acre, and Stanley Newman gives this further account of that July meeting with Mr. Beckmann (p. 79, line 15): "He (Beckmann) kept a hold of me over at the ferry, and he didn't want to let me go until I bought it, and I said 'what did you pay for it; I will give you a fair profit,' and he said that didn't make any difference." Mr. Arthur Newman says (p. 80, line 39): "We met Dr. Lymenfeld at the ferry and he took us to (p. 81, line 1) Mr. Beckmann and he showed us this property and relative property around the county, and when we came back we asked him what the lowest price was, and he said \$1,300 an acre, and we asked him if he would take a profit on his contract, and he said he was making a profit and he also said he could use the money, and after standing about an hour at the ferry he said, 'You will make money on it, and you will be my client, and you will come over here and we will make further commission on other deals.'" Mr. Beckmann admits that he went on this visit to the property with the Newmans (p. 71, line 26) and that before he left for Canada he talked with Dr. Lymenfeld about it (p. 70, line 19).

**As to Asking Price and Sale Price.**

Notwithstanding the testimony of the three witnesses above quoted, Mr. Beckmann insists that he never mentioned to Dr. Lymenfeld any lower price than \$1,600 per acre. There is no reason why he should be believed in this regard as against the three contradicting witnesses, but even if he were believed, the fact remains that nowhere in his testimony has he denied having given Arthur and Stanley Newman the price of \$1,300 per acre.

Therefore, what he may, or may not have told Dr. Lymenfeld, his agent, is of no consequence. The fact clearly appears that \$1,600 per acre was their asking price. Mr. Beckmann says (p. 70, line 27): "That was the price we quoted to everybody." It was, therefore, the highest price that they even asked or quoted to inquirers. There is nothing in the record to show that it was also the minimum price that they were willing to accept. In fact, the whole record is to the contrary. Mr. Kelly testified (p. 73, line 38) that at that time "it was considered worth about \$1,200 or \$1,300." Of course, Eypper & Beckmann had no idea at that time that within the course of the next two or three months the property would double in value (Eypper, p. 60, line 20; Kelly, p. 74, line 10). At \$1,300 per acre they were making a profit on it with which at that time they were satisfied.

Mr. Eypper says (p. 57, line 35): "If there had been no profit, I would not have signed the contract under any circumstances." They had had no prior offer for the property (Beckmann, p. 70, line 33):

"Q. Didn't you tell Mr. Eypper that you had an offer of \$1,600? A. No, we didn't have *any* offer.

**Beckmann's Absence, Leaving Eypper in Charge.**

On Saturday, August 1st, Mr. Beckmann left for Canada (p. 47, line 14) and Mr. Eypper was left with full authority to close the deal (Beckmann, p. 72, line 10):

"Q. When you went to Canada, what did you say to Eypper? A. I did not say anything.

"Q. He took full charge? A. Yes, sir.

"Q. Had general management of the corporation? A. Yes, sir."

**Deposit Paid August 3rd.**

Mr. Stanley Newman testified as to what took place after the above mentioned trip which he made with Mr. Beckmann to the property. He says (p. 79, line 19): "I went back and spoke to my brother and told him about it and I spent two or three days over there around the territory, and I thought it was worth about \$1,300 an acre, and then I met Dr. Lymenfeld and he talked about the future of Bergen County, and I said, 'All right, here is a check for \$500'; I couldn't get in touch with my brother at that time; it was on Sunday and I gave him my check for \$500, and he told me the terms—\$1,300—and I said to get a binder, and he called me up the next day and he told me he was sending me a binder."

Dr. Lymenfeld testified that at the time of the trip to the property with Mr. Beckmann, Messrs. Stanley and Arthur Newman said, "They would talk it over with Mr. Edward D. Newman and let us know" (p. 75, line 15). Then on Sunday, August 2nd (referred to in Mr. Stanley Newman's testimony above quoted) according to Dr. Lymenfeld (p. 75, line 20), "I met Mr. Newman at the seashore and he gave me a check for \$500.00 and he said his brother would agree to it and I accepted the check." Dr. Lymenfeld endorsed the check to the order of Eypper & Beckmann (p. 75, line 28) and then he continues (p. 75, line 31), "I came in the next morning to Eypper and Beckmann's office and I gave it to Mr. Eypper and he said he would let me know the latter part of the afternoon, which he did, and I came around that afternoon, it was evening I guess, and he gave me a binder for the \$500 check on the property, which stated that the contract should be drawn on the 5th, which was two days later."

Mr. Stanley Newman says (p. 79, line 31) that on Monday, August 3rd, Dr. Lymenfeld called him up "and he told me he was sending me a binder, and I said, 'All right,' and I asked him when we were to close and he said, 'On the 5th,' and I said, 'all right'; that was all there was to it."

Mr. Eypper testified also that Dr. Lymenfeld called at his office on Monday, August 3rd (p. 47, line 10). The signing and delivery of the binder by Mr. Eypper is not disputed by the defendant, and it is further admitted that *the \$500 check was deposited in defendant's bank account*. All that transpired between Mr. Eypper and the defendant's agent, Dr. Lymenfeld, on that Monday, August 3rd, is entirely immaterial and irrelevant. Nowhere in the record does it appear that any part of it was made known to the purchaser, or to the purchaser's brothers.

#### **Contract Signed Wednesday, August 5th.**

After the delivery of the \$500 check to Dr. Lymenfeld and the sending of the binder by him, as aforesaid, nothing further appears in the record that has anything whatever to do with the purchaser until Wednesday, August 5th, the day specified in the binder for the execution of the contract. Dr. Lymenfeld says (p. 76, line 11), "on the 5th of the month, Mr. Edward D. Newman and Mr. Stanley Newman came around and we all went to Eypper & Beckmann's office and, of course, I represented Eypper & Beckmann, went down to see that the contract was signed, and the contract *was* signed, and Mr. Eypper gave me a check for \$500 as part of my services, and promised me the rest when title was taken." Mr. Eypper says (p. 51, line 16), "That the contract was made on the afternoon of August 5th, Lymenfeld came in with Newman." Apparently, before the contract was

signed, he deposited the check, and he says that (p. 51, line 38) after the agreement was drawn, he sent the check down for deposit; that the contract was not actually consummated until two or three o'clock; that he thinks it was after banking hours; and that the \$2,500 check, which was delivered at the time of signing the contract, was deposited the next day; that (p. 58, line 20) when Newman and Lymenfeld came in he had the contract partially drawn and almost completed; that Mr. Newman wanted some changes made in it; that "I didn't consider the changes he wanted of any importance, and I let him make them" (p. 58, line 34). There is not a single word in Mr. Eypper's testimony as to his having mentioned or suggested any doubts, questions or reservations concerning the contract to or in the presence of Messrs. Newman, either when they were in his office on August 5th, or at any other time. There is no evidence that the Newmans knew anything about the conversations which are said to have taken place between Mr. Eypper and the defendant's agent, Dr. Lymenfeld, between the time the deposit was made and the time the contract was signed.

#### **Eypper's Authority to Bind the Corporation.**

Mr. Eypper says (p. 53, line 5) that after the contract was signed, "Mr. Newman wanted to know if the secreatry was present to attest it and I said I was acting simply on my own responsibility." In other words, he assured Mr. Newman that the secretary's signature was not necessary, but that he, acting on his own responsibility, had full authority to execute the contract. He testified further (p. 53, line 11) "I knew I had no right to go through with it," but he does not testify that he made any such statement to Mr. Newman. That statement is injected in his answer parantheti-

cally. In answer to the Court's question (p. 65, line 20) Mr. Beckmann admitted that never before had one of them repudiated an agreement made by the other. Later, (p. 71, lines 30-32) the Court asked: "As I understand it, you didn't go through a contract without consulting with the other party?" Ans. "No, sir, we both have to sign, according to the constitution; we often sell a property, and wouldn't *have to at this time if I had been here.*" This answer can mean nothing else than that, notwithstanding what he believes to be the provisions of the "constitution," they would in fact "often sell a property" on the signature of only one of them, and that the only reason he can give why his signature should have been on "at that time" is that he was not here. It is no wonder that he gave such a confused answer. The fact is as his answer admits (p. 72, line 8) "That when he went away to Canada, Mr. Eypper 'took full charge' and 'had general management of the corporation.'" Certainly it appeared so to Mr. Newman. His brothers had reported to him that they had looked at the property with Mr. Beckmann who had quoted the price of \$1,300 per acre, to them. The defendant's agent and representative brought him to the company's office and introduced him to Mr. Eypper, the president of the company. There he found the draft of contract, which had been prepared in the company's office, ready for him to sign. He found the company's president exercising his own judgment as to suggested changes in the contract. He saw the corporate seal produced and affixed to the contract. He saw the president of the company there in charge of the company's office and managing the company's business.

The Court asked Eypper why he did not want to go through with the contract (p. 49, line 21). Did he answer that he did not have authority? No, he

answered because he thought Dr. Lymenfeld waited until Mr. Beckmann was out of reach. Is not the inference plain, therefore, that he did have authority to bind the corporation?

As to the contract not being acknowledged, in the first place there is no law requiring a contract to be acknowledged; in the second place, a contract of sale is rarely acknowledged and the only purpose of making a request for an acknowledgment would be to put the contract on record.

#### **Telephone Conversation with Eypper on or About August 26th.**

After the signing of the contract, nothing happened in respect to it so far as was known by Mr. Newman, until on or about August 26th, and he gave the following account of what took place then (p. 32, line 19): "About three weeks after I signed this contract, Mr. Eypper called me on the telephone and wanted to know whether I wanted to sell the property, and I asked him for what, and he said he could get me \$1,700 per acre for the property, so I told him, 'No, I do not want to sell the property; I do not know what I want to do with it, but I want to take title to it first before I do anything' and I asked him what Title Company examined the property before and he told me the Peoples Trust & Guaranty Company of Hackensack, and I told him I wanted to insure the title and I ordered that company to examine the title for me." Mr. Eypper does not deny that he had this conversation with Mr. Newman. There is no doubt that by that time something had happened which had greatly increased the value of the property. They were looking for some way out of the contract. Dr. Lymenfeld said (p. 75, line 21), "Several weeks after that (signing of the contract), I got a call from

the office \* \* \* I went right over \* \* \* they were discussing something, and Mr. Beckmann said, 'Did I tell you \$1,300' and I said, 'Yes' and he said, 'No, I said \$1,600.' Then I said, 'No, George, you told me \$1,300 several times.'" After that conversation Lymanfeld heard nothing further from them (p. 75, line 33). It must have been about the same time as Eypper's above mentioned telephone conversation with Newman. Mr. Beckmann, after having told of this last mentioned conference with Dr. Lymanfeld, testified as follows (p. 67, line 13):

"Q. What did you do after that? A. We didn't know what to do; we simply \* \* \*,"

"Q. You were waiting? A. We were waiting."

It was good of counsel to tell him what they were doing; that is exactly what they were doing, "Waiting," and trying to think up some way by which they could get out of the contract.

**Telephone Conversation of September 25th  
Between Beckmann and Newman.**

As we have seen, after his telephone conversation with Mr. Eypper, Mr. Newman ordered the title to be examined. There is not a single word in the record of anything that transpired between Eypper, Beckmann and Lymanfeld, on the one hand, and any of the Newmans, on the other hand, between the time of Newman's above mentioned telephone conversation with Eypper, and a telephone conversation which he had with Beckmann on September 24th. Meanwhile, the complainant corporation had been organized for the express purpose of taking over this property, the real party in interest in the complainant corporation being Mr. Mehr. Nothing to that effect appears in the

record, but it is fair to assume that Mr. Newman had in the meantime sold his contract to Mr. Mehr and that Mr. Mehr had caused the complainant corporation to be formed for the purpose of taking over the property (Edward D. Newman, p. 40, line 23). On September 23rd, Mr. Newman assigned his contract to complainant corporation (p. 41, line 3). Evidently the title examination had been completed, and inasmuch as the contract provided that title might be closed on five days' notice, Mr. Newman called up Eypper & Beckmann Co. on the telephone on September 25th, and Mr. Beckmann answered the 'phone (p. 32, line 37). Mr. Newman did not at that time know Mr. Beckmann's voice, but he later met Mr. Beckmann, so that at the time of testifying he knew that it was Beckmann he had talked with (p. 33, line 7). He continues (p. 34, line 5): "I said that we wanted to close title on October 5th, on five days' notice, and I told him I was ready to close title, and it was to be at the Peoples Trust & Guaranty Company of Hackensack, and I asked him if he was willing to close the title at the office of the Peoples Trust Company instead of his office, and he said, 'Yes,' and I said I would be ready on October 2nd, and I said I would write him a letter because the contract provided five days' notice, and he should reply to it." Mr. Beckmann admits this conversation, although he gets confused as to the details of it. He was asked (p. 67, line 19), "When did you receive any information about the assigning of the contract, or the going through with the deal?" and he answered, "The first time was when Mr. Newman called me up." What he testified to at the bottom of page 67 manifestly belongs to the later telephone conversation of September

30th, because he admits on the same page that at that time he had not yet consulted his attorney (p. 69, line 30). In rebuttal, Mr. Edward Newman testified (p. 82, line 38): "Mr. Beckmann never told me on September 25th that he was surprised or that his company would repudiate the contract; he told me that on September 30th."

#### **Letter of September 25th.**

To confirm the telephone conversation of September 25th, Mr. Newman wrote the letter of that date which is in evidence and which confirms the telephone conversation (Exhibit C-4, p. 107; offered p. 34, line 29). It is ridiculous for defendant to say that this letter was at that time written in an attempt "to bolster up a lost cause," because even the defendants themselves do not say that at any time prior to September 25th had either they, or their agent, Dr. Lymenfeld, said anything to Mr. Newman about repudiating the contract, certainly if Mr. Beckmann had repudiated the contract in the telephone conversation of September 25th, Mr. Newman's letter of that day would not have been as it is. The shock of Mr. Beckmann's informing him for the first time in the telephone conversation that they refused to go through with the contract would certainly have resulted in a different letter from that which is in evidence.

#### **Telephone Conversation of September 30th.**

Mr. Beckmann admits that it was after the telephone conversation of September 25th, that he first consulted his lawyer. Mr. Newman testified (p. 34, line 32), "I didn't get a reply, but it was on September 30th, or October 1st, I again called up Eypper & Beckmann and Mr. Beckmann got on the phone and I said that I didn't get a reply to

my letter of September 25th, and he said, 'Didn't you get a letter from our lawyer?' and I said, 'No,' and I said, 'What is the matter?' And he said, 'I cannot tell you; you will hear from my lawyer.'" Mr. Beckmann does not deny that a second telephone conversation was had. It is clear that he confuses the two conversations.

#### **Attempted Closing of October 2nd.**

Mr. Newman testifies (p. 35, line 20), "On October 2nd, we were present at the office of the Peoples Trust & Guaranty Company of Hackensack, in accordance with my letter of September 25th that we would be ready to close the contract on that day, and Mr. Mehr, of the Ritz Realty Corporation was there and also the secretary of the company, but nobody showed up \* \* \*. We were unable to close, so on October 5th, I think it was, I wrote another letter" (Exhibit C-6, p. 109).

#### **Letter of Repudiation Dated September 30th.**

It was in the telephone conversation of September 30th that Mr. Beckmann expressed surprise that a letter had not yet been received from his attorney. Evidently the attorney had delayed writing the letter, and it seems that after the telephone conversation with Mr. Newman on the 30th Mr. Beckmann immediately got in touch with his attorney again because the attorney's letter of repudiation is dated September 30th (Exhibit C-5, p. 108; offered p. 35). It is a final and unqualified repudiation. After receipt of that letter it was not necessary for Mr. Newman or his assignee to go through the vain formality of a tender which they had already been informed would not be accepted.

**Attempted Closing of October 14th.**

However, it was possible that the defendant might have a change of heart. Therefore, at the time and place designated in said letter of October 5th, Mr. Newman, together with his brother and Mr. Mehr and a representative of the title company, went to the office of Eypper & Beckmann. Mr. Newman testifies (p. 37, line 24), "Mr. Beckmann said they would not close title and that he understands I am there to make a formal tender, and I wanted to discuss the matter with him, but he refused to discuss it." \* \* \* "I offered to go through with the contract in every respect" (p. 43, line 37). It appears, therefore, that there had been no change of heart in the meantime. When they got there they were met by Mr. Beckmann's refusal to even discuss the matter. Mr. Beckmann does not deny this. There is no testimony to the effect that the defendant requested anything that was refused or that there was any failure or unwillingness on the part of the purchasers to carry out every last detail of the contract. Under such circumstances it is preposterous for defendant's counsel to ask Mr. Newman on cross examination whether he did or said this, that or the other thing, and whether he expressly offered to do this, that or the other thing. The defendant admits that at that time Mr. Newman was talking to deaf ears and it is not contradicted that Mr. Beckmann refused to even discuss the matter. He did not refuse to close because of any defect in the tender, but because of the defendant's determination, previously communicated to Mr. Newman, that it repudiated the contract and would not go through with it.

*Edward D. Newman, cross:*

"Q. Did you personally agree to assume the

\$17,000 mortgage? A. I will say yes, because I was there and I was ready, and the Ritz Realty Corp. was ready. \* \* \* (p. 44, line 28).

"Q. Did you expressly agree to assume the payment of the mortgage? A. I did not *in express words*" (p. 45, line 8).

Why should he have expressed any such words? What is there to indicate that that detail of the closing was any more in the minds of either side than any other detail was? Mr. Beckmann having refused to discuss the matter, there was no occasion or even opportunity to refer to the various details, terms and provisions of the contract. In short, the purchasers went there and announced their willingness "to go through with the contract in every respect," and the defendant stopped them. Never in a Court of Equity has one been permitted to take advantage of such action of his own as a ground for being relieved from his contract.

**As to the Telegrams, &c.**

It is not shown that any of the Newmans had any knowledge of the alleged telegrams and letters between Eypper and Beckmann or that the defendant's agent, Dr. Lymanfeld, communicated to them anything concerning the conversations which Mr. Eypper says he had with Dr. Lymanfeld relative to Mr. Beckmann's approval of the deal. It is submitted that all that line of testimony is incompetent, immaterial and irrelevant and should be ignored. The first telegram (Exhibit D-1, p. 116) was not even delivered to Mr. Beckmann (p. 51, line 11). If any such telegram was in truth attempted to be sent it asks merely whether Mr. Beckmann had offered the property to Mr. Newman at \$1,300 per acre. The question asked in

that alleged telegram has been fully answered by the testimony in the case. The second telegram (Exhibit D-2, p. 116) if it was actually sent, as claimed by Mr. Beckmann, was in answer to a letter which he says he received from Mr. Eypper (p. 65, line 30). They do not offer the letter in evidence. Certainly in offering these self-serving writings they are not at liberty to pick and choose. Even if the telegram were otherwise competent it is incompetent under the circumstances because the letter to which it was a reply was not offered. Did Mr. Eypper say in that letter that he had sold the property for \$1,300 an acre? Did he congratulate himself and Mr. Beckmann upon having put the deal over? If Mr. Beckmann understood when he went away that Mr. Eypper was not authorized to enter into a contract for the sale of property at \$1,300 per acre, why was he not shocked at the receipt of that letter? Why did he not in his telegram repudiate the contract or make some mention of lack of authority? At all events, these things were all kept *inter sese* and had nothing to do with Eypper's apparent authority or with the relations and dealings between the vendor and the vendee.

**The Contract Signed by Eypper is Binding Upon the Corporation.**

We have, we believe, mentioned everything that appears in the record which has any bearing upon the relations and dealings between the vendor and its representatives on the one hand and on the other hand the purchaser and the purchaser's assignee and their representatives. We submit that hardly could a case be presented in which a contract made in the name of a corporation would more clearly appear to be binding upon and enforceable against the corporation.

It was "the act of an authorized agent." Mr. Eypper's authority to sign the contract must necessarily be implied from all the facts and circumstances. "The act is within the apparent powers which the corporation has caused those with whom its officers or agents have dealt to believe it has conferred upon them." *Aerial League, &c. v. Aircraft Corp.*, 97 N. J. L. 530, at 532.

"The present case, as we think, requires no discussion of the question, what powers pertain to the president of such a company merely by virtue of his office?—a question concerning which there is much confusion and contradiction among the authorities." *Murphy v. Cane, Inc.*, 82 N. J. L. 557. "The president of the company was authorized to represent it generally in the making of such contracts as that upon which the complainant relies, and therefore its contract was within the scope of his agency," *id.* "But he did not testify to any formal resolution adopted by the so-called 'directors.' It being admitted that no minutes of their meetings were kept, it is reasonable to infer that there were informal conferences rather than meetings, and that they resulted in advice rather than more formal action," *id.*

In *Murphy v. Cane, Inc.*, *supra*, Chancellor PITNEY quotes from Justice DEPUE's opinion in *Stokes v. N. J. Pottery Co.*, 17 Vr. 237 at 242, and observes (bot. p. 562):

"It is not correct we think to confine the application of this doctrine to cases of strict estoppel. At least, where a third party seeks to charge a corporation with a contract made by it through the agency of one of its officers, it is not incumbent on such third party to show that the previous course of business was known to and relied upon by him. \* \* \* A third party is entitled to hold the principal on

a contract made by the agent in the name of the principal, even though the party does not at the time of the making of the contract know the particular source of the agent's authority. In cases of the class now before us, the third party, when litigation necessitates proof of the agency, may adduce evidence of the customary exercise by the alleged agent of the authority appropriate to such an agent under circumstances that give rise to the inference of knowledge and acquiescence on the part of the principal \* \* \* not necessarily to show that the principal is estopped in favor of the third party to deny the agency, but rather to show that such agency was in fact created. The language employed by Mr. Justice Dupue was that the authority of the officer to represent the corporation may be implied (we would prefer to say *inferred*) 'from the manner in which he has been permitted by the directors to transact its business.'"

In *Kuebler Foundry, Inc. v. H. J. Koehler Motors Corp.*, 100 N. J. L. 163, our Court of Errors and Appeals, speaking through Mr. Justice WHITE, said:

"In modern times a great majority of all business enterprises has assumed corporate form. Not only is it the apt vehicle for promoting and managing large enterprises where the combined capital contributions of the many are essential for success, but the corporation is also the most scientific and satisfactory form of partnership between two or more people, who, desiring to create and conduct a comparatively small business enterprise together, desire also to eliminate the element of the danger of its sudden termination and, in all probability, unjust reorganization, in the event of the death of what would otherwise be one of the partners. It is obviously essential, therefore, in the great mass of a corporation's usual course of business necessarily

and customarily conducted by its officers and other agents that the same principles which apply to and fix the rights and obligations arising from the doctrine of agency in the individual business world should also apply as well where the principal is a corporation as where it is an individual. In either case, 'In matters arising in the usual course of' its or his business, the principal, whether a corporation or an individual, is bound by the agent's undertakings in its or his behalf within the scope of such agent's employment or apparent authority. The third party who deals with such agent should not and does not have to look further than that."

And in *Fifth Ward Savings Bank v. First National Bank*, 48 N. J. L. 513, at 527, it was said:

"There are cases in which the powers of an officer of a corporation and his authority to act for the company are enlarged beyond those powers which are inherent in his office. But those are cases in which the agency of the officer has arisen from the assent of the directors, presumed from their consent and acquiescence in permitting the officer to assume the direction and control of the business of the company. Thus, when, in the usual course of the business of a corporation, an officer has been allowed to manage its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to transact its business. These are simply instances of the application of the principle that usual employment is evidence of the powers of an agent, and a responsibility will be laid upon the principal for the acts of his agent within the apparent authority so conferred upon the agent—a doctrine which has come to be applied to corporations in many respects as well as to individuals, and with the same qualifications and limitations. In such cases, the authority

of the officer does not depend so much on his title, or on the theoretical nature of his office, as on the duties he is in the habit of performing." (Citing *Stokes v. New Jersey Pottery Co.*, 17 Vroom 237-242; *Martin v. Webb*, 110 U. S. page 7 and other cases.)

As to the by-laws of appellant the case of *State v. Overton*, 24 N. J. L. 435, holds explicitly that the by-laws of a corporation bind only the members and not strangers.

#### Estoppel.

In addition to the principle of apparent authority we also have in the present case an element of estoppel and of adoption as against all the stockholders and the corporation itself. The two wives are estopped because they were mere dummies and without question left all the affairs of the corporation solely to their husbands and acquiesced in whatever the husbands did. Eypper is bound by having signed the contract. Beckmann, therefore, is the only stockholder who needs to be specially mentioned. It was he who first showed the property to Messrs. Newman and we submit that the fact is clearly established that he offered it to them at \$1,300 per acre. He went away and himself testified that he left Eypper in complete charge of the corporation. When he returned on or about August 19th, he learned of the whole transaction and of the fact that the \$3,000 was then in the treasury of the corporation. He was its treasurer, and if he intended to repudiate the contract the duty lay peculiarly upon him to promptly refund that \$3,000. He did not, and he does not even claim to have advised the purchaser of any intended repudiation or to have brought home to the purchaser knowledge of its intention to repudiate until the telephone

conversation at the end of September, a month and a half after his return. In the meantime, Mr. Newman had the title examined and had assigned his contract, in reliance upon the contract being binding and without any knowledge or even intimation that Mr. Beckmann had any idea of repudiating. Though it is not directly proved, it is a fair inference that Beckmann knew of Mr. Eypper's telephone conversation with Mr. Newman, in which Mr. Eypper on behalf of the corporation offered to buy back the property. From the 5th of August to the first part of October, practically two months, the defendant corporation had the use of the \$3,000.

"Equity realizes that this legal entity is but a legal fiction; looking through the form it discerns the substance. It finds that a stock corporation is in essence an aggregation of individuals, a statutory partnership with assignable membership and limited liability of the members, and so the doctrine of equitable estoppel applies fully to all the internal concerns of stock companies." *Breslin v. Fries-Breslin Co.*, 70 N. J. L. 274 at 282.

"The body of stockholders are in substance the corporation. Estoppels are concurrent as between the stockholders and the corporation; in other words, whatever will estop the stockholders will estop the corporation, and whatever will estop the corporation will estop the stockholders." 4 *Thomp. Corp.*, Sec. 5269, quoted with approval in *Breslin v. Fries-Breslin Co.*, *supra*.

"The ideal body is, in theory of law, principal and the board of directors are the managing agents; but, *in theory of equity*, the body of the stockholders are beneficiaries in a trust and the directors are their trustees. It follows that many acts which the directors may do outside the scope of their powers become ratified and valid by the acquiescence of the body of stockholders." *Id.*

The minute book of the appellants shows no minutes of any meetings of either stockholders or directors since it was organized but it was held that a corporation is liable for the acts of its agent done by its authority, express or implied, though there be neither written appointment under seal, nor a vote of the corporation constituting the agency or authorizing the act. *State v. Morris & Essex R. R. Co.*, 23 N. J. L. 360.

Further, the case of *Parsons Mfg. Co. v. Hamilton Ice Mfg. Co.*, 78 N. J. L., pages 309 at 312, it was held, that a corporation through its agents, may ratify the agreement of those agents and the ratification which is substantially another method of estoppel in pais may be evidenced from the facts and circumstances and the acts of the parties and the nature of the subject-matter involved.

So, in this case, from the acts of both Eypper and Beckmann and the retention and use of the \$3,000.00 and from all the circumstances heretofore shown, there is an estoppel, ratification and adoption as against the appellant corporation and all the stockholders and directors.

**Repudiation Made a Formal Tender by  
Complainant Unnecessary.**

The letter from defendant's attorney of September 30th, expressly states: "In connection therewith, I beg to inform you in behalf of Eypper & Beckmann, Inc., that the alleged contract entered into by yourself and Mr. Eypper in behalf of the Eypper & Beckman, Inc., is hereby repudiated."

"Where a seller makes any declaration which amounts to a repudiation of the contract, or takes any position which would render a tender a vain and idle ceremony, a tender is waived by the seller." *Kastens v.*

*Ruland*, 94 Eq. 451; 235 N. Y. 55; 207 App. Div. (New York), 465; *Wright v. Gillespie*, 261 Fed. Rep. 46; 38 Cyc. page 135.

Pomeroy, in his latest work on Specific Performance of Contracts, 3rd Edition, 1926, on page 768, sets forth the law as follows:

"An actual tender by the plaintiff before suit is unnecessary, where from the acts of the defendant or from the situation of the property it would be wholly nugatory, a mere useless form. If therefore, before or at the time of completion the defendant has openly and avowedly refused to perform his part, or declared his intention not to perform at all events, then the plaintiff need not make a tender or demand of performance before bringing his suit."

To the same effect are the cases of *Oakey v. Cook*, 41 N. J. Eq. 250; *McCormick v. Hickey*, 56 N. J. Eq. 848; *Brown v. Norcross*, 59 N. J. Eq. 427.

"A formal tender is not a prerequisite to the compelling in equity of a specific performance of a contract to convey where the purchaser was at the place where the conveyance was to be made ready and willing to perform his part of the contract, but the seller was not ready to perform his part." *Roche v. Osborne*, 69 Atl. 176.

In the case of *Trenton Street Railway Company v. Lawler*, 73 N. Y. Eq. 203, it was held:

"Complainant is entitled to specific performance of a contract made between counsel for the respective parties to a lawsuit for its settlement, notwithstanding no tender of payment of the agreed sum by the defendant in the lawsuit was made where it appeared that the other party to the lawsuit was unwilling to carry out the bargain and had said he would not accept it."

"Any defect in the tender by the purchaser is immaterial where the vendor repudiates the contract of sale. And if the vendor refused the tender on some specified ground he thereby waives his right to object to the sufficiency of the tender on other grounds which, if stated, could have been cured by the purchaser. Thus where the vendor, on tender of performance by the purchaser, refuses to tender without claiming that the purchaser is in default, he cannot afterward, when sued for breach of contract, claim that the purchaser failed to perform the contract" 39 Cyc. 1566.

"A formal tender of price is not always necessary to be shown to justify specific performance, particularly where defendant's own conduct prevented it from being made; the question of tender being really one of costs." *Meyer v. Reed*, 109 Atl. 733.

#### CONCLUSION.

There is no merit in any of the four grounds alleged by defendant as justification for its repudiation of the contract. The decree appealed from should be affirmed.

Respectfully submitted,

MACKAY & MACKAY,  
Solicitors for and of Counsel  
with Complainant-Respondent.

HOWARD MACKAY,  
RALPH E. LUM,  
Of Counsel.