

19 FEB. T. 1932

ON BRIEFS

New Jersey Court of Errors and Appeals

Between
ALFRED J. MORRIS,
Complainant-Respondent,
and
MAX FRIEDBERG, *et als.,*
Defendants-Appellants.

ON BILL, ETC.

ON APPEAL FROM COURT OF CHANCERY.

State of the Case

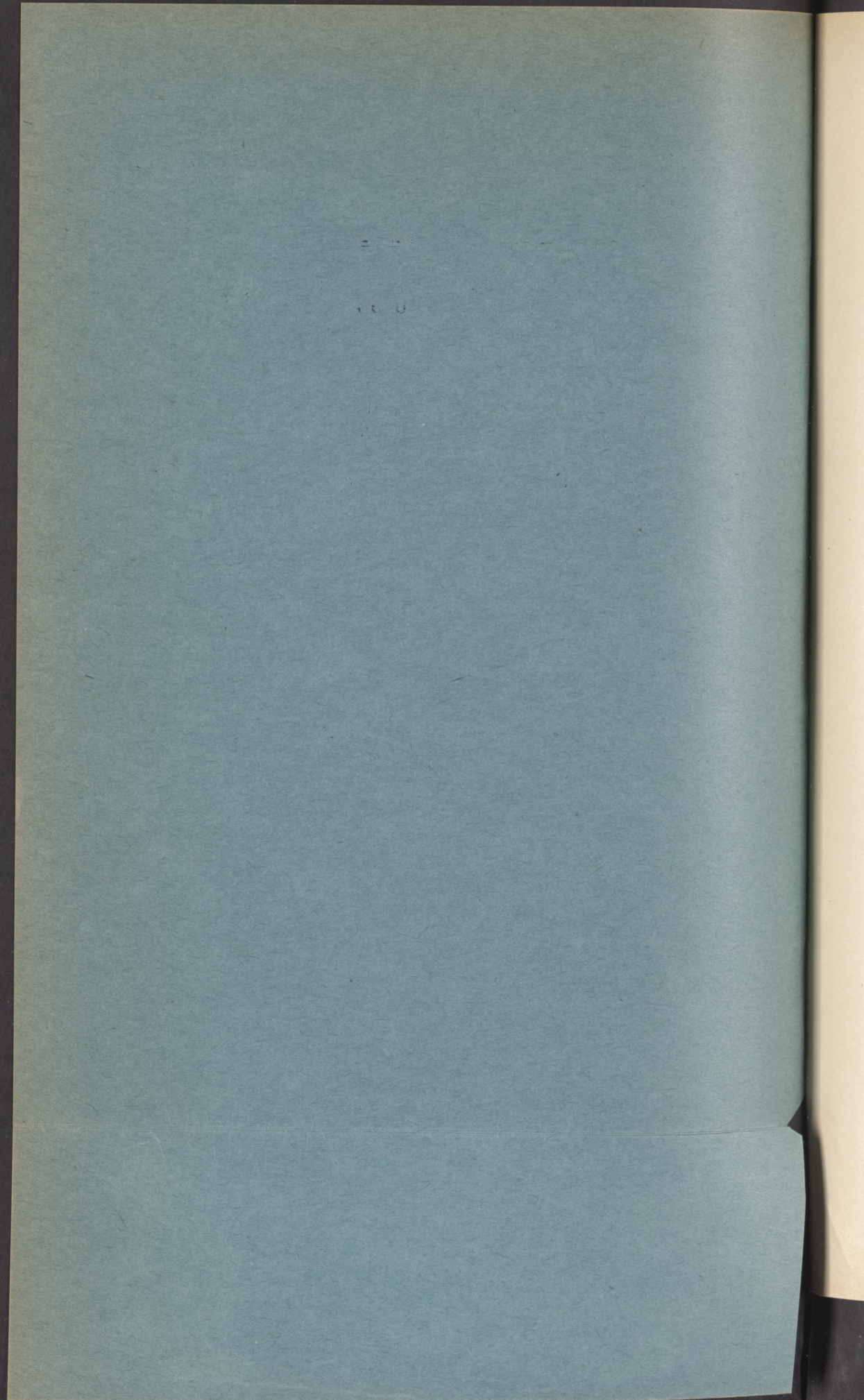
ALBERT C. ABBOTT,
*Solicitor for Complainant-
Respondent.*
PHILIP MONHEIT,
*Solicitor for Defendants-
Appellants.*
GORSON & GORSON,
*Of Counsel with Defendants-
Appellants.*

Sat below:
INGERSOLL,
V. C.

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

Due and legal service of the within
State of the Case, is hereby acknowledged
this 12th day of May, 1931.

Albert C. Abbott
Solicitor for Complainant-Respondent
by G. M. S.



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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Alfred J. Morris, of the City and County of Philadelphia and State of Pennsylvania, respectfully shows that:

10

1. On March 29, 1926, Max Friedberg, being indebted to Alfred J. Morris, in the sum of five thousand dollars (\$5,000.00), executed to him a bond of that date to secure that sum, payable three years from the date thereof, with interest at the rate of six per cent, and, a payment of \$250.00 on the principal due and payable on September 29, 1926, and an installment of \$250.00 at the end of each and every six months thereafter, during the life thereof, with interest at the rate of six per cent per annum, payable semi-annually from the date of the bond. 20

2. To secure the payment of the bond, said Max Friedberg executed to said Alfred J. Morris a mortgage of even date with the bond, and thereby conveyed to him, in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond, which mortgage, having been first duly acknowledged according to law, and the certificate of acknowledgment endorsed thereon, was on March 31, 1926, recorded in the clerk's office of At- 30

Atlantic County, at Mays Landing, New Jersey, in Book 395 of Mortgages, page 19.

3. The mortgaged premises are described as follows:

10 ALL that lot, tract or parcel of land and premises situate, lying and being in the City of Atlantic City, in the County of Atlantic and State of New Jersey, bounded and described as follows: BEGINNING at a point in the Southerly line of Belfield Avenue (formerly known as "Empire Avenue") ninety feet East of the Easterly line of Kentucky Avenue, said distance being measured at right angles thereto and extending thence (1) Eastwardly, in and along the Southerly line of Belfield Avenue, twenty-four feet; thence (2) Southwardly, and parallel with 20 Kentucky Avenue, seventy-five feet; thence (3) Westwardly, and parallel with Belfield Avenue, twenty-four feet; thence (4) Northwardly, and parallel with Kentucky Avenue, seventy-five feet to the place of beginning.

4. The said bond and mortgage contain an agreement that if any installment of interest should remain unpaid for thirty days after the same shall fall due, then the whole principal sum, with all unpaid 30 interest, should, at the option of the mortgagee, his heirs, executors, administrators and assigns, become immediately due.

5. The said Max Friedberg is married and his wife's name is Lena Friedberg.

Any interest which the said Lena Friedberg may

have in said premises is subsequent and subject to the lien of complainant's mortgage.

6. On March 29, 1929, the balance due on the principal of said bond and mortgage became due and payable and same was not paid; and on September 29, 1929, default was made in the semi-annual payments of interest due on said bond and mortgage and no part thereof has yet been paid. 10
By reason thereof, complainant has elected that the whole balance of said principal sum with all interest shall now be due.

7. There is due complainant on the said mortgage the sum of \$1200.00, together with interest from March 29, 1929.

8. The said Max Friedberg has always been in 20 possession of the mortgaged premises.

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

1. That Max Friedberg and Lena Friedberg, his wife, who are the defendants in this suit, may answer this bill of complaint and each statement therein made.

2. That an account may be taken of the amount due on complainant's mortgage. 30

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interest and costs, by a short day to be ap-

pointed by this Court; and that in default of such payment they and each of them be debarred and foreclosed of all equity of redemption in said lands; or

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

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

ALBERT C. ABBOTT,
*Solicitor for and of Counsel
with Complainant.*

20

30

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between

ALFRED J. MORRIS,
Complainant,
 and
 MAX FRIEDBERG, *et al.,*
Defendants.

On Bill to Fore-
 close, &c.
 Answer.

10

Defendant, Max Friedman, by way of answer to 20
 complainant's bill of complaint, says:

1. He admits paragraph 1 of the bill of complaint.
2. He admits paragraph 2 of the bill of complaint.
3. He admits paragraph 3 of the bill of complaint.
4. He admits paragraph 4 of the bill of complaint.
5. He admits paragraph 5 of the bill of complaint.
6. He denies paragraph 6 of the bill of complaint.
7. He denies paragraph 7 of the bill of complaint.

30

BY WAY OF DEFENSE.

FIRST DEFENSE.

Defendant, Max Friedberg, denies that there are any monies due and owing on said bond and mortgage hereinafter referred to.

10

SECOND DEFENSE.

Defendant, Max Friedberg, says that the said Alfred J. Morris received full payment of all monies due and owing on said bond and mortgage. Payment being made to the said Alfred J. Morris, by duly authorized agent.

20

THIRD DEFENSE.

Defendant, Max Friedberg, says that he paid all monies due and owing on said bond and mortgage to an agent and that the said Alfred J. Morris, knew that payment of principal and interest was being made to said agent and accepted from said agent the monies received on said bond and mortgage.

30

FOURTH DEFENSE.

Said Alfred J. Morris authorized the said agent to collect the principal and interest due on said

mortgage. Said Alfred J. Morris authorized and ratified the acts of the said agent to collect the principal and interest from defendant, Max Friedberg.

PHILIP MONHEIT,

Solicitor for

GORSON & GORSON,

Of Counsel with Complain-

ant.

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TESTIMONY.

IN CHANCERY OF NEW JERSEY.

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ALFRED J. MORRIS,	}	On Bill, &c. Final Hearing.
<i>Complainant,</i>		
and		
MAX FRIEDBERG, <i>et als.,</i>		
		<i>Defendants.</i>

20

Atlantic City, N. J., February 18, 1931.

Before HON. ROBERT H. INGERSOLL, Vice-Chancellor.

APPEARANCES:

For the complainant, ALBERT C. ABBOTT, ESQ.
30 For the defendants, PHILIP MONHEIT, ESQ.

ALFRED J. MORRIS, SWORN.

Direct examination.

By Mr. Abbott:

Q. Mr. Morris, where do you reside? 10

A. 6906— Philadelphia.

Q. You are the complainant in this matter?

A. Yes, sir.

Mr. Abbott: I wish to offer a bond and warrant made by Max Friedberg to Alfred J. Morris in the penal sum of ten thousand dollars, to secure the payment of the just sum of five thousand dollars, dated twenty-ninth day of March, 1926.

20

(Bond admitted and marked Exhibit C1.)

I offer mortgage made by Max Friedberg to Alfred J. Morris dated March 29, 1926, to secure the payment of the just sum of five thousand dollars, said mortgage covering property on Bellfield Avenue, Atlantic City, and is duly recorded on March 31, 1926, in Book 395 of Mortgages, page 99, &c., in the clerk's office of Atlantic County.

30

(Mortgage admitted and marked Exhibit C2.)

I also wish to offer search of the Chelsea Title and Guaranty Company number 9673 against the premises described in said mortgage.

(Search admitted and marked Exhibit C3.)

Q. Mr. Morris, are you the owner of the bond and mortgage just offered in evidence?

A. Yes, sir.

Q. Has any part of the principal been paid?

A. Yes, sir.

10 Q. How much?

A. \$3800.

Q. And is the balance of \$1200 still due and owing?

A. Yes, sir.

Q. Is there any interest due on that sum?

A. On the \$1200, yes, sir.

Q. From when?

A. From March 29, 1929.

Cross-examination.

20

By Mr. Monheit:

Q. Mr. Morris, did you collect any of this principal and interest from Mr. Friedberg?

A. No, sir.

Q. Who collected?

A. Mr. Reed.

Q. Do you know under what name he was operating?

30 A. Beg pardon.

Q. Do you know under what name he was operating his business?

A. Through Mr. Reed.

Q. I know but did you ever hear of the Guarantee Realty and Finance Company?

A. I seen it on all his letters.

Q. Guarantee Realty and Finance Company?

A. Yes, sir.

Q. Did he send you checks for moneys on this particular bond and mortgage?

A. Yes, sir.

Q. Mr. Reed sign them?

A. Yes, sir.

Q. On behalf of the Guarantee Realty and Finance Company?

A. Yes, sir.

Q. You received the sum of \$3800 on the mortgage in question which has been offered in evidence?

A. Yes, sir.

Q. From the Guarantee Realty and Finance Company signed by Mr. Reed?

A. No, sir. From Mr. Reed, yes, sir.

Q. I mean the checks were signed Guarantee Realty Company, Walter T. Reed?

20

A. Walter T. Reed, yes, sir.

Q. That is the way they were signed?

A. Walter T. Reed.

Q. This \$3800 wasn't paid in one lump sum, was it?

A. No, sir.

Q. Over how long a period did it extend?

A. From 1926 to 1929 when I got my last payment, last installment.

Q. As Mr. Reed was making these payments to you he would send you copies of the receipts he gave to Mr. Friedberg, wouldn't he?

A. No, he would send me a statement.

Q. If I show you some of those statements, do you think you could recall whether or not you received them from Mr. Reed?

A. Yes, sometimes he would send me statements in with other moneys.

Q. In other words he acted for you in other ways too, did he not?

A. Yes, Mr. Reed.

Q. Did he ever send you a statement of that character?

10 A. Yes, sir.

Q. He did?

A. I received that, yes, sir.

Q. Did he send you a statement of that character with the check enclosed?

A. No, I can't be sure about the check now. I don't remember that far back.

Q. If these receipts that I show you aggregate the sum of \$3800 you are quite sure you got that much from Mr. Reed, are you not?

20 A. That is what I did get.

Q. If these receipts given by Walter T. Reed to Max Friedberg aggregate the total sum of \$3800 and also the interest, that much you did receive?

A. Yes, sir.

Q. Do you know of your own knowledge over what period of time you continued to receive from Mr. Reed principal and interest on the bond and mortgage which has been offered in evidence?

A. The agreement was what I would call —

30

(Question repeated.)

A. From 1926 to 1929.

Q. And that was—did you ever during that period of time have occasion to see Mr. Friedberg and ask him for any of the principal and interest?

A. No, sir.

Q. Who did you expect to get the principal and interest for you?

A. Mr. Reed.

Q. And he was the one whom you delegated to collect the principal and interest for you, was he not?

A. Yes, sir.

Q. Payments of the principal under the terms of this mortgage were not made punctually in accordance with the terms, were they? 10

A. No, sir.

Q. Mr. Reed used to consult you about those matters, did he not?

A. Well, when the mortgage interest was over due then I would write to Mr. Reed and ask him to try to collect this money for me.

Q. To do such things as would be necessary for him to effect the collection of it? 20

A. Yes, sir.

Q. How much do you claim is now due you on that mortgage, Mr. Morris?

A. \$1200.

Q. You didn't receive that \$1200 from Mr. Reed, did you?

A. No, sir, else I wouldn't be asking for it.

Q. What?

A. No, I didn't receive it.

Q. You had expected him to collect it, did you not? 30

A. I was asking him to collect it. I wrote and asked him to collect it, yes.

Q. He was the one who was delegated to collect it, wasn't he?

A. Yes, sir.

Q. You had some talk with him about a note for this \$1200, did you not?

A. About a note? He said Mr. Friedberg had offered him a note. I would think about that and that is all I ever knew and I am still waiting for him to think about it.

10 Q. What did you say when Mr. Reed talked to you about Mr. Friedberg wanting to give a note for the \$1200 balance?

A. I didn't say anything. I was waiting for him to make up his mind.

Q. Well, did you say that you would leave it up to Mr. Reed or did you merely sit by?

A. I didn't even answer the letter on it.

Q. You had a personal conversation with Mr. Reed, did you not?

A. No, sir.

20 Q. Didn't you have a conversation saying that Mr. Reed could do as he thought fit?

A. No, sir.

Q. Or words to that effect?

A. No, sir.

Mr. Abbott: Fix the time.

Mr. Monheit: Very difficult to fix the time in this case.

30

Mr. Abbott: Approximately.

Q. Did you have a conversation with respect, see Mr. Reed personally with respect to this \$1200 balance between March and December of 1929?

A. I had a conversation with Mr. Reed about collecting the money.

Q. With Mr. Reed personally?

A. Yes.

Q. That was with respect to the \$1200 balance?

A. Yes. But not on a note.

Q. When did the conversation come up about the note which you mentioned?

10

A. I had no conversation with him at all about a note.

Q. Well, you did testify that you had some correspondence with him about a note?

A. Yes, he asked me, he said Mr. Friedberg had stopped in to see him and he was talking about accepting a note but he said, "I don't know whether that will be right or not" and then I still waited to see what he was going to do.

Q. You never heard anything since, did you? 20

A. No.

Q. Had Mr. Reed accepted the note what would have been your disposition?

Mr. Abbott: I object.

The Court: Sustain the objection.

By Mr. Abbott:

30

Q. Did you have any dealings whatsoever with the Guarantee Realty Company?

A. No, sir.

Q. Did you ever receive any letter from the Guarantee Realty Company?

A. No, sir

Q. Did you ever write the Guarantee Realty Company?

A. No, sir.

Q. Do you know any of the officers of the Guarantee Realty Company?

A. No, sir.

10 By Mr. Monheit:

Q. The stationery with which Mr. Reed sent you letters and receipts was on the Guarantee Realty and Finance Company stationery, was it not?

A. Yes, sir.

Q. Each and every instance it was on said stationery, was it not?

A. Yes, sir.

Q. But signed by Walter T. Reed?

20 A. Yes, sir.

COMPLAINANT RESTS.

Mr. Monheit: I presume, with permission of the Court, I can read the deposition of Walter T. Reed.

DEPOSITION.

IN CHANCERY OF NEW JERSEY.

Between

ALFRED J. MORRIS,
Complainant,
and
MAX FRIEDBURG, *et al.*,
Defendants.

On Bill, etc.
Deposition.

10

Deposition of Walter T. Reed, taken at the Lees- 20
burg Prison Farm, on February 6, 1931, before
CLAUDE W. MYROSE, Supreme Court Examiner, in the
presence of Thomas G. Siddall, Esq., appearing for
Albert C. Abbott, Esq., solicitor of complaint, and
Philip Monheit, Esq., appearing for Messrs. Gorson
& Gorson, solicitors of defendants.

(It is agreed that the deposition shall be taken 30
before Claude W. Myrose, Supreme Court Exam-
iner, and the signature of the witness waived.)

WALTER T. REED, SWORN.

Direct examination.

By Mr. Monheit:

10 Q. Mr. Reed, were you an officer of the Guaranty Realty & Finance Company?

A. No, sir.

Q. What connection did you have with the Guaranty Finance Company?

A. I was manager for the company.

Q. As such, what were your duties with the company?

A. The minute book will tell you.

Q. You haven't the minute book with you?

20 A. No.

Q. Do you know where you last left it?

A. It was in my office.

Q. Did you collect moneys from one Alfred J. Morris on a mortgage executed by Max Friedburg and others to Alfred J. Morris?

A. Yes, I collected moneys. I was Mr. Morris's agent.

30 Q. What conversation did you have with Mr. Morris with respect to this mortgage? In other words, how did you come to collect the moneys on this mortgage for Mr. Morris?

A. He came in my office and wanted me to represent him.

Q. Do you mean by "me" the Guaranty Realty & Finance Company?

A. Yes, the Guaranty Realty & Finance Company. We called it the Guaranty Realty Company.

Q. What did he say to you?

A. Well, first I collected his rents around there.

Q. In other words, he owned the building at one time?

A. Yes, and afterwards we sold the property.

Q. To whom?

10

A. I don't know. It was sold two or three times, I think. No, I guess it was sold to Mr. Friedburg.

Q. What did Mr. Morris tell you with respect to the collection of these moneys on this mortgage which was held by Morris and given by Friedburg?

A. Well, most all of this money I sent to Mr. Morris.

Q. What did he tell you at the time he turned over the mortgage to you or at the time you started collecting the money?

20

A. Told me to collect the money and invest the money for him.

Q. Told you to collect the money and invest it for him?

A. And invest it for him. There are letters down there to that effect.

Q. By collecting money did he mean only the interest on the money?

A. No, he wanted the principal invested. The interest I delivered to him.

30

Q. Did he authorize you to collect the principal and interest on this mortgage?

A. Yes.

Q. As a result of that did you start collecting the principal and interest on this mortgage?

A. Yes, I always took care of it.

Q. I show you a receipt dated March 30th, 1927, on the stationery of the Guaranty Realty & Finance Company, and ask you whether or not you gave Mr. Friedburg, the defendant, the receipt?

A. Yes.

Q. I show you a receipt and ask you whether or not that receipt was given by you to Max Fried-
10 burg, which receipt is dated September 29th, 1927?

A. That isn't my handwriting. This first one is, but this one is not.

Q. Do you know whose it is?

A. That belongs to Mrs. Smith.

Q. Was she working for you?

A. She is Mrs. Smith now, but evidently she wasn't married at that time. Yes.

Q. Did you get that money?

A. Oh, yes, no doubt about it.

20 Q. Is that her handwriting?

A. Yes.

Q. Do you know it?

A. Yes.

Q. I show you a receipt dated March 29th, 1928, drawn on stationery of the Guaranty Realty & Finance Company, for moneys paid by Max Friedburg to you on behalf of mortgage money due Alfred Morris, and ask you whether or not you gave that receipt?

30 A. Yes.

Q. I show you a similar receipt dated September 29th, 1928.

A. That was signed by Mrs. Smith.

Q. You did get that money?

A. No doubt about it.

Q. You know her signature?

A. Yes.

Q. Likewise, another receipt dated March 9th, 1929.

A. Yes.

Q. A similar receipt dated July 3rd, 1929.

A. None of these are duplicates, are they, in the dates?

Q. No.

10

A. Yes, that is my signature.

Q. And one dated September 3rd, 1929?

A. Yes.

Q. And one dated October 7th, 1929?

A. Yes.

Q. Now, Mr. Reed, Mr. Morris on his mortgage claims that there is a \$1200 balance due him. Do you recall whether or not you had turned over the \$3800 on said mortgage, besides the interest, to Mr. Morris, which you had collected, or had accounted 20 to him for that?

A. Yes, I accounted to him for all of that.

Q. For \$3800?

A. Yes.

Q. And during all the time you were making these collections on the principal and interest you rendered an accounting and told him you were collecting this principal and interest?

A. I think Mr. Morris will have letters to that effect.

30

Q. When you started collecting the principal and interest, that is, for the Guaranty Realty & Finance Company, were you so authorized by Mr. Morris?

A. Mr. Morris, as I recollect, received all this money except the \$1200.

(The question was repeated.)

A. Yes.

Q. And you recall now that all but \$1200 had been accounted for to Mr. Morris?

A. I am sure all but the \$1200.

Q. I show you a receipt dated December 26th,
10 1929, drawn on the stationery of the Guaranty Realty & Finance Company, for a note of \$1200.

A. Yes.

Q. And ask you whether or not you received that note?

A. Yes.

Q. Were you authorized by Mr. Morris on behalf of the Guaranty Realty & Finance Company to accept the note?

A. Yes.

20 Q. And did you accept a note, in fact?

A. Yes.

Q. I show you a copy of the note and ask you whether or not this is the note in question?

A. Yes.

Mr. Monheit: I offer the note and all these receipts in evidence.

30 (The receipts were marked Exhibits D1 to 9, inclusive, and the note was marked Exhibit D10.)

Q. I show you another receipt which is undated, drawn on the stationery of the Guaranty Realty & Finance Company, and signed by you or someone under you, for interest and principal due Morris

from Friedburg, and ask you whether or not that is your signature?

A. Yes, that is mine.

(The paper was offered in evidence and marked Exhibit D11.)

Q. Did you have some talk with Mr. Morris about 10 this \$1200 note?

A. Yes.

Q. Do you recall when that was?

A. No, I can't tell.

Q. Was it before the execution and your acceptance of the note in question from Mr. Friedburg.

A. Yes.

Q. Can you, to your best memory, recall what that conversation was with Mr. Morris?

A. Mr. Morris came to me in my office and we 20 sat down and talked the situation over. He asked me to try to get this money for him; there was a first mortgage on the property and he didn't believe the property was worth any more than the first mortgage. I said, "Well, would you take a note?" He says, "Yes, if you think it is all right." I said, "I think it is all right to take a note from Mr. Friedburg, he is a good man," and after our conversation we agreed to take the note if we couldn't get the cash, and then Mr. Morris said, "Well, you might 30 as well take the note and discount it in your bank, have the note made to you."

Q. To whose order did he mean, the Guaranty Realty & Finance Company?

A. He didn't know who the Guaranty Realty & Finance Company was any more than anyone else,

you know. And reinvest this money for him, and the transaction was carried through in that way. That is all there is to it.

Q. You, in fact, did get a note, did you not?

A. This is the note.

Q. And you did discount it?

A. Yes, at the Guarantee Trust Company.

10 Q. After the execution of the note, assuming the note for so much cash, was the amount of the principal and interest due on said mortgage fully satisfied?

A. I am not sure whether the interest was paid on the note or not in advance.

Q. I don't mean that. I mean upon the acceptance of the note, was that the complete payment upon the mortgage?

A. Yes, that completed the mortgage.

20 Q. The full payment?

A. Yes. I think the receipts show that.

Q. Did Mr. Morris know that Mr. Friedburg gave you a note?

A. I don't know. There was so short a time elapsed, I don't know. I won't say yes or no on that.

Q. All these acts that you performed in the collection of these installments and interest was done on behalf of the Guaranty Realty & Finance Company?
30

A. It was done through the Guaranty Realty and Finance Company's office.

Cross-examination.

By Mr. Siddall:

Q. This note dated December 31st, 1929, Mr. Reed, did you receive that note from Mr. Friedburg without any negotiations with Mr. Morris before you receive it, or any instructions from him. 10

A. No, Mr. Morris told me to collect this mortgage, get the rest of it by note or by check, whichever we could.

Q. He told you to collect the mortgage either by note or by check?

A. Yes.

Q. And that was prior to the time this note was given to you?

A. Yes.

Q. In other words, you didn't take the note from Mr. Friedburg and then tell Morris that you had taken a note from Mr. Friedburg? 20

A. I don't remember now whether I wrote to Mr. Morris and told him I had received the note or not. I don't remember that.

Q. You say this note was discounted at the Guarantee Trust Company?

A. Yes.

Q. And was paid?

A. Well, it looks as if it was paid. I don't know. 30

Q. Well, it wasn't necessary for the Guarantee —

A. It wasn't paid before I left Atlantic City. It wasn't due then, I am sure.

Q. And as far as you know, the note wasn't paid?

A. I don't know. I can't answer that question.

Re-direct examination.

By Mr. Monheit:

Q. This note drawn to the order of the Guaranty Realty & Finance Company, Mr. Morris authorized you to accept such note?

10 A. Well, I wouldn't have taken it if he hadn't.

Re-cross examination.

By Mr. Siddall:

Q. What position did you occupy with the Guaranty Realty & Finance Company?

A. I was the manager.

Q. What were your duties as manager?

20 A. Well, I had charge of the buying and selling, the same as any corporation, buying and selling real estate, depositing money, giving checks as manager, and receiving checks and endorsing them. I had full charge of the company.

Q. Mr. Friedburg, in making these payments, to whom did he make them?

A. Made them to me.

Q. I mean as to the Guaranty Realty & Finance Company or as to you individually?

30 A. Well, he made some to me and some to the Guaranty Realty & Finance Company. He would bring the checks in there and if he brought them in made to the Guaranty Realty & Finance Company it would be all right and if he made them to me it would be all right. You will notice those checks are

endorsed by the Guaranty Realty & Finance Company.

Mr. Monheit: I will offer these checks in evidence.

(Six checks were marked Exhibits D12 to 17, inclusive.) 10

Q. When did you first come to know Mr. Morris?

A. I don't know. About two or three years ago, I would say. I couldn't tell.

Q. When he came to the office to authorize either you or the Guaranty Realty Company to collect the principal and interest on this bond and mortgage, with whom did he think he was doing business, or with whom did he do business?

A. Well, he always did business with me. That is, 20
he talked to me because I represented the company.

Q. Because you represented the company?

A. Yes.

Q. Do you know what his understanding was, whether he was doing business with you personally or with the Guaranty Realty Company?

A. Well, that is for him to say. I would say off-handed he was doing business with me, he thought he was doing business with me.

Q. Personally? 30

A. Yes. Of course, he knew the company was there. The sign was on the window and all, and that was my company. I explained it to him, the situation.

Q. Did he authorize you personally to collect the

principal and interest, or did he authorize the Guaranty Realty & Finance Company?

A. No, he would authorize me.

Q. He would authorize you personally.

A. Yes, because he wrote all his letters direct to me personally. I don't think he ever wrote a letter to the Guaranty Realty Company.

10 Q. In these receipts where your name is attested by the letters M. R., is that the same as the receipts attested to by the letter S.

A. Yes, the same person.

Q. How do you account for the different initials?

A. The R. was when she was single and the S. was after she was married.

Q. What was her maiden name?

A. Mary Rovinsky, I think it is.

Q. What is her married name?

20 A. Smith.

By Mr. Monheit:

Q. Mr. Morris knew that you were working through the Guaranty Realty & Finance Company?

A. He knew I was manager for it, no doubt.

Q. And you operated through the Guaranty Realty & Finance Company?

A. Yes.

30 Q. All your transactions?

A. Yes, practically all my transactions were through the Guaranty Realty & Finance Company.

I hereby certify that the foregoing is a full and accurate transcript of the testimony taken before me in the before entitled cause.

CLAUDE W. MYROSE,
Supreme Court Examiner.

10

Mr. Monheit: I offer in evidence the depositions, checks and receipts that have been offered in evidence at the time of the examination of Mr. Reed.

(Papers admitted and marked Exhibits D1 to 10 inclusive.)

MAX FRIEDBERG, SWORN.

20

Direct examination.

By Mr. Monheit:

Q. Mr. Friedberg, are you the defendant in this cause wherein Mr. Morris is foreclosing a mortgage for a balance of \$1200 against you?

A. Twelve hundred dollars.

Q. Did you pay —

30

Mr. Monheit: I understand it is admitted we paid the \$1200 on the note to the Guarantee Trust Company?

Mr. Abbott: Yes, sir.

Mr. Monheit: It is admitted we paid the \$1200 on said note to the Guarantee Trust Company.

A. Paid \$1200 and cost of suit —

The Court: There is no question. Just answer the questions.

10

Q. Do you recall when Mr. Morris gave you five thousand dollars on a mortgage you executed to him?

A. Yes, when I bought the property.

Q. Where did that settlement take place?

A. South Jersey Title Company.

Q. Who was present besides yourself?

A. My wife was there.

Q. Was Mr. Morris there?

20

A. Morris, sure.

Q. Did you have any conversation with him?

A. Well, I asked him how I—you see it was an installment mortgage to be reduced every six months, I asked how I have to make payments, he told me I have to make payments to that concern Reed is manager of and I did.

Q. What was the name of the concern?

A. Guarantee Realty and Finance Company, Walter Reed, manager.

30

Q. Is that where you made all the payments?

A. There is where I made all the payments.

Q. Do you owe any part of that five thousand dollars?

A. The \$1200 I paid the note.

Q. I am asking you did you owe any part of that \$5,000?

A. No, I don't owe any at all. It is all paid. I guess my receipts proves it is all paid. These days I can go —

The Court: Wait a moment. Just answer the questions.

Q. Did you have any conversation with Mr. Reed 10 with respect to the taking of this note of \$1200?

A. I will tell you how it was, he called me one time —

Mr. Abbott: I object.

The Court: I will admit that. I may strike it later, but I will admit it at this time.

Q. What conversation did you have with Mr. 20 Reed?

A. He asked me if I couldn't pay that money the balance \$1200. I told him I am a little tied up at the present time, in about two months I will have some money come in and I will pay it. So he said well, I will write him a letter and see what he will say, if, maybe it would be advisable, if he needs the money, paid he will take my note providing will be authorized by the mortgagee he will take my note 30 for three months and then he will keep the mortgage as collateral security until the note is paid in full, so about a couple of weeks later he called me and showed me a letter from Mr. Morris and appreciate very much he will do him the favor of collecting the money, he didn't like to be hampering Mr. Friedberg, always treat him right.

Mr. Abbott: I object to this and move this be stricken in relation to the letter.

The Court: Let it be stricken.

A. And I gave him the note for the \$1200 and I got a receipt in full and I paid the note too.

10 Q. Does this receipt represent under what circumstances you executed the note to the Guarantee Realty and Finance Company in the sum of \$1200?

A. Yes, that was for the mortgage there.

Q. And it represents the understanding of the transaction that was had at that time?

A. Exactly.

Cross-examination.

20 By Mr. Abbott:

Q. Most of your dealings were with the Guarantee Realty and Finance Company?

A. Yes. They were the agents.

Q. You did, however, have two transactions, one transaction with Mr. Morris direct?

A. Well, I will tell you any time that I didn't find —

Q. Just answer the question.

30 A. —Reed in the office I was to make out the check to Mr. Morris, if I didn't find him in the office, that is what I did, so you will find some checks in Morris' name.

Q. September 21, 1929, you had one check to Alfred J. Morris for \$1231.60?

A. Yes.

Q. Then you made out one check for \$36 to Walter T. Reed?

A. That was interest.

Q. October 7, 1929.

A. That was interest. That was the time when I gave him the note, so that was the interest.

Q. Did you ever meet Mr. Morris personally?

A. I met him at the time when I bought the property, from that time on I didn't see him until today.

Mr. Abbott: Have you the checks, Mr. Monheit, wherewith you paid Mr. Morris?

Mr. Monheit: Checks we paid direct to Mr. Morris?

Mr. Abbott: Yes.

20

Mr. Monheit: Whatever I had in my file that was turned over to me I had offered in evidence at the time of the examination before trial, but you can ask him and if he has he will produce them. I know that.

By Mr. Monheit:

Q. Did you say you didn't see Mr. Friedberg from the time you made the settlement in the South Jersey Title Company until today? 30

A. Until today I didn't see him.

Q. I note Mr. Abbott had asked you about the check of \$1231. Where did you leave that check?

A. Where did I leave that check?

Q. Yes.

A. At the same office.

Q. That is in the Guarantee ——

A. Any time I didn't find Mr. Reed there I will make out the check I used to make out ——

Q. Is this the way the check was returned to you endorsed?

A. Yes.

10

MRS. LENA FRIEDBERG, SWORN.

Direct examination.

By Mr. Monheit:

Q. Mrs. Friedberg, were you present in the South Jersey Title Company at the time your husband
20 gave the mortgage to Mr. Morris?

A. Yes.

Q. Did you hear any conversation between your husband and Mr. Morris with respect to the collection of the installment and interest?

A. Well, he said should pay to Mr. Reed through the ——

Q. Through the company?

A. Through the company.

30 Cross-examination.

By Mr. Abbott:

Q. What was the conversation between Mr. Morris and Mr. Reed?

A. Well, they talked about paying ——

Q. In relation to the payment of this money?

A. Well, to who should pay the money.

Q. Mr. Reed said he should pay it?

A. Mr. Morris said —

Q. You should pay it to Mr. Reed?

A. To Mr. Reed.

DEFENDANTS REST.

10

COMPLAINANT'S REBUTTAL.

ALFRED J. MORRIS, recalled.

Direct examination.

By Mr. Abbott:

20

Q. Mr. Morris, where were you during the latter part of November, all of December, January and February of 1929 and 1930?

A. I was in the Lankenau Hospital, Philadelphia.

Q. When did you go to the hospital?

A. Well, I couldn't be sure right on the date but it was a day or two before Thanksgiving.

Q. Were you seriously ill?

A. Very ill. I had an operation and then I had 30 blood hemorrhages twice afterwards and I was seriously ill and I was in four months.

Q. During the time you were in the hospital did you see Mr. Reed?

A. No, sir.

Q. Did you write him any letters?

A. I wrote him one letter I think from the hospital and I had an answer to that.

Q. Did you tell him at any time to accept the note for the \$1200?

A. No, sir.

Q. When was the first time that you knew that a note had been given for \$1200?

10 A. I didn't know a note had been given until after Mr. Reed's arrest and I put it in your hands.

Q. When was that, as near as you can recall?

A. Why that would be March, 1929—1930 so far as I can recollect.

Q. That was the first information that you had that a note had been given?

A. Yes; I still thought the check was due me.

Q. Did you receive a letter from Mr. Reed dated Atlantic City, February 20, 1930? Did you receive
20 a letter from him?

A. What date was that, please?

Q. February 20, 1930?

A. Well, I may have; I just don't recall now.

Mr. Monheit: What is the purpose? It has nothing to do with this transaction.

Mr. Abbott: I just want to show to corroborate the statement of Mr. Morris to the effect that Reed
30 did not apprise him of the note having been given.

Mr. Monheit: No objection.

Q. I ask you if you received that letter on or about that date?

A. Yes, sir.

The Court: You may read such parts as are applicable by consent.

Mr. Abbott: "Mr. Alfred J. Morris, 6906 Seabrook Avenue, Philadelphia, Pa.

My dear old friend:

I know it feels good to be back home again after being up in the hospital so long seeing so many of those nurses but when you get real sick I believe that is the best place to go, not that you don't get good attention home, because everything will be done for you and me that our family can do, but it is pretty hard on the family when we are very sick. I think if any thing happened to me I would want to go to the hospital just like you did, but, thank goodness, my health is fine and I would rather give it to the hospital than to go there. 10

I will get in touch with Mr. Friedberg immediately and see what he is going to do. I know that he has had much some vacancies in some of his other properties, but that has nothing to do with us. It is a mighty good thing we collected as much as we did because now we certainly will not have to take the property back. He keeps his taxes up and his B. & L. is paid up, so all we need now is the rest of the money." 20

(Letter admitted and marked C4.)

30

Q. Mr. Reed testified before the Supreme Court Examiner as follows: "Were you authorized by Mr. Morris on behalf of the Guarantee Realty and Finance Company to accept the note? A. Yes." Did you ever authorize the Guarantee Realty and Finance Company to accept the note?

A. No, sir.

Q. Did you ever have any dealings with the Guarantee Realty and Finance Company?

A. No, sir.

Q. In any way?

A. No, sir.

Q. Did you authorize Mr. Reed to accept the note?

10 A. No, sir.

Q. Did he visit you while you were in the hospital?

A. No, sir; he wrote me and told me he was going to visit me several times but he never visited me.

Q. To whom were his letters addressed while you were in the hospital?

A. My wife. I authorized him before I went to the hospital all business transactions would be taken up through my wife.

20 Q. He further stated that Mr. Morris, meaning you, "came to me in my office and we sat down and talked the situation over. He asked me to try to get the money for him. There was a first mortgage on the property and he didn't believe the property was worth any more than the first mortgage. I said, 'Well, would you take a note?' And he says, 'Yes If you think it is all right.' I said, 'I think it is all right to take a note from Mr. Friedberg. He is a good man.' And after a conversation we agreed to take the note if we could not get the cash. I
30 think Mr. Morris said, 'Well, you might as well take the note and discount it in your bank, have the note made to you.' " Did you have such a conversation with Mr. Reed?

A. No, sir, or I don't know nothing about it. I wouldn't know how to discount it even at that time.

Cross-examination.

By Mr. Monheit:

Q. Do you know when Mr. Reed got into difficulties?

A. Beg pardon?

Q. Do you recall Mr. Reed got into difficulties? 10

A. Do I recall it?

Q. Recall when he got into difficulties?

A. The first thing I knew anything about it.

Q. Do you recall the date about when he got into difficulties?

A. I was just going to explain my way. I came home from hospital and I was still in bed, confined to my bed and my wife was reading the paper on the side of the bed and then she got up and walked away and then she came back and then she walked away. 20

Q. In other words he got in difficulties while you were still in the hospital, is that right?

A. I don't know. I am just trying to tell you we read it in the paper the first thing, I was home at that time. My wife read it out of the Bulletin.

Q. You don't know the date about when, do you?

A. No, I don't—well, some time in March.

TESTIMONY CLOSED.

30

EXHIBIT D1.

2/6/31 m

Walter T. Reed Marine 7803
 GUARANTEE REALTY AND FINANCE
 10 COMPANY
 16 South Tennessee Avenue
 Atlantic City, N. J.

March 30, 1927.

Received from Max Friedberg, six (6) months interest on \$4,750.00 mortgage at 1520 Belfield Avenue, Atlantic City, being due on the 29th day of March, 1927. Also \$250.00 being paid on the principal of the above amount, leaving a balance of \$4,500.00.

20 Received payment by the Guarantee Realty & Finance Co., by Walter T. Reed, for Alfred J. Morris.

Walter T. Reed

Six Months Interest.....\$142.50
 Principal of Mortgage..... 250.00

Total\$392.50

(In ink):

30

600

150

 14250

750

 13500

EXHIBIT D2.

2/6/31 m

Walter T. Reed Marine 7803 10
GUARANTEE REALTY AND FINANCE
COMPANY
16 South Tennessee Avenue
Atlantic City, N. J.

September 29, 1927.

Received from Max Friedberg, six (6) months interest on \$4,500.00 mortgage at 1520 Belfield Avenue, Atlantic City, being due on the 29th day of September, 1927. Also \$250.00 being paid on the principal of the above amount, leaving a balance of 20 \$4,250.00.

Received payment by the Guarantee Realty & Finance Co., by Walter T. Reed, for Alfred J. Morris.

Walter T. Reed
Per M. R.

Six months interest	\$135.00
Paid on principal of mtg.	250.00
	<hr/>
	\$385.00 30

EXHIBIT D3.

2/6/31 m

10 Walter T. Reed Marine 7803
 GUARANTEE REALTY AND FINANCE
 COMPANY
 16 South Tennessee Avenue
 Atlantic City, N. J.

March 29, 1928.

Received from Max Friedberg, Six (6) months interest on \$4,250.00 mortgage on 1520 Belfield Avenue, Atlantic City, New Jersey, being due on the 29th day of March, 1928. Also \$250.00 being paid
 20 on the principal of the above amount, leaving a balance of \$4,000.00.

Received payment by the Guarantee Realty & Finance Co., by Walter T. Reed, for Alfred J. Morris.

Walter T. Reed

Six months interest	\$127.50
Paid on principal of mortgage.	250.00
	<hr/>
	\$377.50

30

EXHIBIT D4.

2/6/31 m

Walter T. Reed Marine 7803 10
 GUARANTEE REALTY AND FINANCE
 COMPANY
 16 South Tennessee Avenue
 Atlantic City, N. J.

September 29, 1928.

Received from Max Friedberg, six (6) months interest on \$4,000.00 mortgage on 1520 Belfield Avenue, Atlantic City, New Jersey, being due on this 29th day of September, 1928. Also \$250.00 being paid on the principal of the above amount, leaving 20 a balance of \$3,750.00.

Received payment by the Guarantee Realty and Finance Co., by Walter T. Reed, for Alfred J. Morris.

	Walter T. Reed	
		S.
Six Months interest		\$122.66
Paid on principal of mortgage		250.00
		\$372.66 30

EXHIBIT D5.

2/6/31 m

Walter T. Reed Marine 7803
GUARANTEE REALTY AND FINANCE
COMPANY

10

16 South Tennessee Avenue
Atlantic City, N. J.

March 9, 1929

Mr. Max Friedberg,
2215 Atlantic Avenue,
Atlantic City, N. J.

Dear Sir:

The mortgage held by Mr. Alfred J. Morris on
1520 Belfield Avenue will be due and payable on the
20 29th day of March, 1929. The principal amounts to
\$3,750.00 and the interest for 6 months amounts to
\$112.50, making a total of \$3,862.50.

Mr. Morris has asked me to write you this letter
and tell you that he would expect you to pay off this
mortgage on the above date, when the principal and
interest will be due.

You can make your payment in this office and I
will have Mr. Morris send down the papers for
cancellation.

30

Yours very truly,

Walter T. Reed

WTR:MRS

Reed from Mr Friedberg Three hundred & Fifty
Dolars on Principal of Bond & Mtg on Property
Located At 1520 Belfield Ave At City N. J. and
One hundred & Twelve & Fifty Cents for six months

Interest on Bond & Mtg As above Leaving Bal
\$3400.00 Due and Will be Paid in June

Walter T Reed
for Mr A. J. Morris

10

EXHIBIT D6.

2/6/31 m

Walter T. Reed Marine 7803
GUARANTEE REALTY AND FINANCE
COMPANY

16 South Tennessee Avenue 20
Atlantic City, N. J.

July 3, 1929.

Received from Mr. Max Friedberg, One Thousand Dollars (\$1,000) on principal of Bond & Mortgage on property at 1520 Belfield Avenue, Atlantic City, New Jersey. Also Fifteen Dollars (\$15) for three (3) months interest to July 1st, 1929.

This leaves a balance of Two Thousand, Four Hundred Dollars (\$2,400) still due on the Bond and Mortgage held by Alfred J. Morris. 30

Balance will be paid sometime during the month of August, 1929.

W. T. Reed
for Mr Morris

EXHIBIT D7.

2/6/31 m

Walter T. Reed Marine 7803
 GUARANTEE REALTY AND FINANCE
 10 COMPANY
 16 South Tennessee Avenue
 Atlantic City, N. J.

September 3, 1929.

Received from Max Friedberg, \$1200.00 on principal of Bond & Mortgage on property 1520 Belfield Avenue, Atlantic City, New Jersey.

Also \$31.60 for 158 days interest to September 3, 1929.

This leaves a balance of \$1200.00 still due on the
 20 Bond & Mortgage held by Mr. Alfred J. Morris.

Balance will be paid at a near future.

Walter T. Reed
 For Mr A. J. Morris

EXHIBIT D8.

2/6/31 m

30 Walter T. Reed Marine 7803
 GUARANTEE REALTY AND FINANCE
 COMPANY
 16 South Tennessee Avenue
 Atlantic City, N. J.

October 7, 1929.

Received from Max Friedberg, Thirty-six Dol-

lars (\$36.00) being 6 months interest on Bond & Mortgage held by Alfred J. Morris on property 1520 Belfield Avenue, Atlantic City, N. J.

Walter T. Reed

10

EXHIBIT D9.

2/6/31 m

Walter T. Reed

Marine 7803

GUARANTEE REALTY AND FINANCE
COMPANY

16 South Tennessee Avenue
Atlantic City, N. J.

December 26, 1929. 20

Received from Mr. Max Friedberg a note for \$1200.00 dated the 31st day of December, 1929 for 3 months from that date. The said note has been authorized by Mr. Alfred J. Morris to be given to the Guarantee Realty and Finance Company and to be discounted by the said company and the proceeds are to go to the said Mr. Alfred J. Morris. The Guarantee Realty and Finance Company holds a letter from Mr. Morris authorizing Mr. Reed as agent for the said Guarantee Realty and Finance Company and Mr. Morris to accept the said note and negotiate same for Mr. Morris. 30

Mtgs is on 1520 Belfield Ave

The said \$1200.00 note is given in connection with a balance that is due on a certain mortgage held by Mr. Morris in the sum of \$1200.00 being the bal-

ance of the said mortgage is held by Mr. Morris from December 31st on as a collateral to guarantee the payment of the said note in the sum of \$1200.00. When the said note is paid off in full, the said Mr. Morris will surrender the mortgage so same can be cancelled of record and also all insurance that accompanies this mortgage.

10

Walter T. Reed

EXHIBIT D11.

2/6/31 m

20

Walter T. Reed

Marine 7803

GUARANTEE REALTY AND FINANCE
COMPANY

16 South Tennessee Avenue
Atlantic City, N. J.

Received from Mr. Max Friedberg, one hundred fifty, (\$150.00) dollars being six (6) months interest due September 29th on Bond & Mortgage at 1520 Belfield Avenue, and also a payment of two hundred fifty (\$250.00) dollars on the principal of said mortgage also due on September 29, 1926.

30

Alfred Morris
of Walter T. Reed

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

10

Between

ALFRED J. MORRIS,	}	On Bill, &c. Conclusions (Oral).
<i>Complainant,</i>		
and		
MAX FRIEDBERG, <i>et al.</i> ,	}	
<i>Defendants.</i>		

(These conclusions are not to be published in the 20 official or unofficial reports.)

Mr. Albert C. Abbott for complainant.
Mr. Philip Monheit for defendants.

INGERSOLL, V. C.: 30

I would have serious difficulties with the equities in this matter were it not for the receipt which Mr. Friedberg presents for this note in question. There cannot be the slightest question in my mind but that Mr. Friedberg understood and Mr. Reed understood that this was an unusual method of making pay-

ment. Now, either Mr. Friedberg demanded or Mr. Reed thought that the receipt which was given by Reed to Friedberg would explain the unusual character of this transaction, and a reading of that receipt is convincing that both Mr. Reed and Mr. Friedberg, or at least one of them, thoroughly appreciated that unusual situation. This receipt, in
10 part, reads:

“Received from Mr. Max Friedberg a note for \$1200 dated thirty-first day of December, 1929, for three months from that date. The said note has been authorized by Mr. Alfred J. Morris to be given to the Guarantee Realty and Finance Company and to be discounted by the said company and the proceeds are to go to the said Mr. Alfred J. Morris. The Guarantee Realty and Finance Company holds a letter from Mr. Morris authorizing Mr. Reed as agent of the said Guarantee Realty and Finance Company and Mr. Morris to accept the said
20 note and negotiate same for Mr. Morris.”

Evidently Reed, seeing the unusual condition of this settlement, thought it was necessary to protect himself and to assure Mr. Friedberg that he had authority. There is not the slightest testimony that Mr. Friedberg, even when his attention was called
30 to the fact that Reed at least considered it necessary to aver that authority, ever asked—at least there is no testimony to the contrary—to see that letter or to have any authority presented to him. Nor has there been any attempt to present that letter at the present hearing. Had an attempt been made and no such letter presented, a somewhat dif-

ferent situation might have arisen than in the event of no search having been made for such a letter.

Morris swears that there was no such letter. I am convinced that he is correct in that statement. I am convinced that the testimony of Mr. Reed, as well as the form of this receipt, is perhaps an attempt to cover up the real situation. Had there been a payment in cash to Mr. Reed by Mr. Friedberg, even if Mr. Morris had not received it, it would be manifest, under the testimony produced, that Reed at least—I am not now referring to the Guarantee Company—was authorized by Morris to collect both the interest and principal. In fact, Morris so says, but we have now reached the point where an unusual occurrence is met, an occurrence which the agent deems necessary to explain, and an occurrence which evidently Friedberg was cognizant of but satisfied with the explanation made, as he took no further steps. 10 20

Under those circumstances, I am bound to find that the payment of the balance on this mortgage by note was unauthorized by Mr. Morris and it was an act beyond the authority of Mr. Reed to transact.

Under those circumstances, the giving of the note and the later payment of it by Mr. Friedberg was not a payment on account of the principal of this mortgage and I will be compelled to advise a decree in accordance therewith. 30

Determined: February 18, 1931.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

10	Between ALFRED J. MORRIS, <i>Complainant,</i> and MAX FRIEDBERG, <i>et al.,</i> <i>Defendants.</i>	}	On Bill, etc. Final Decree.
----	---	---	--------------------------------

20 This cause coming on to be heard in the presence of Albert C. Abbott, solicitor of the complainant, the complainant's bill having been heretofore taken as confessed against Lena Friedberg, and Philip Monheit, solicitor of the defendant, Max Friedberg, appearing for said defendant, and the Court having examined the pleadings, and having heard the evidence in open court, and it appearing to the satisfaction of the Court that the mortgage sought to be foreclosed in this suit was given to secure the payment of five thousand dollars (\$5,000.00); that there is now due on said mortgage for principal and interest, the sum of one thousand three hundred thirty-five dollars and eighty cents (\$1,335.80), together with interest thereon from the eighteenth day of February, 1931, being the date of the final hearing in this cause; and it appearing that fees for

30

searches necessary and proper for the foreclosure of the complainant's said mortgage, amounting to the sum of \$21.18 is a proper charge to be taxed in the costs of this suit; and it further appearing that the mortgaged premises described in said mortgage and in the complainant's bill of complaint should be sold to pay to the complainant the sum of one thousand three hundred thirty-five dollars and eighty cents (\$1,335.80), together with interest thereon as aforesaid, together with costs of suit; 10

It is, thereupon, on this 14 day of April, nineteen hundred and thirty-one, ordered, adjudged and decreed that the said mortgaged premises described in the bill of complaint in this cause be sold as aforesaid to raise and satisfy the moneys due to the complainant, that is to say, to pay and satisfy unto the complainant the sum of one thousand three hundred thirty-five dollars and eighty cents (\$1,335.80), with 20 lawful interest thereon to be computed from the eighteenth day of February, 1931, being the date of the final hearing in this cause, together with lawful costs of this suit to be taxed, including a counsel fee of fifty dollars, which is hereby allowed to said complainant, and that the said sum of twenty-one dollars and eighteen cents (\$21.18) for search fees be included in said taxed costs, and that a writ of *feri facias* issue for that purpose out of this court, directed to the Sheriff of Atlantic County, commanding him to make sale according to law, of said mortgaged premises described in complainant's bill of complaint, and that out of the moneys arising from said sale, he pay to the complainant, or his solicitor, his said debt, interest and costs, and in case more money shall be raised by said sale then shall be 30

sufficient to answer such payment that such surplus money be brought into this court to abide the further order of this court, unless otherwise previously disposed of by this Court, and that the sheriff make return without delay of his proceedings by virtue of said writ.

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

.....
C.

Respectfully advised,
INGERSOLL,
V. C.

20

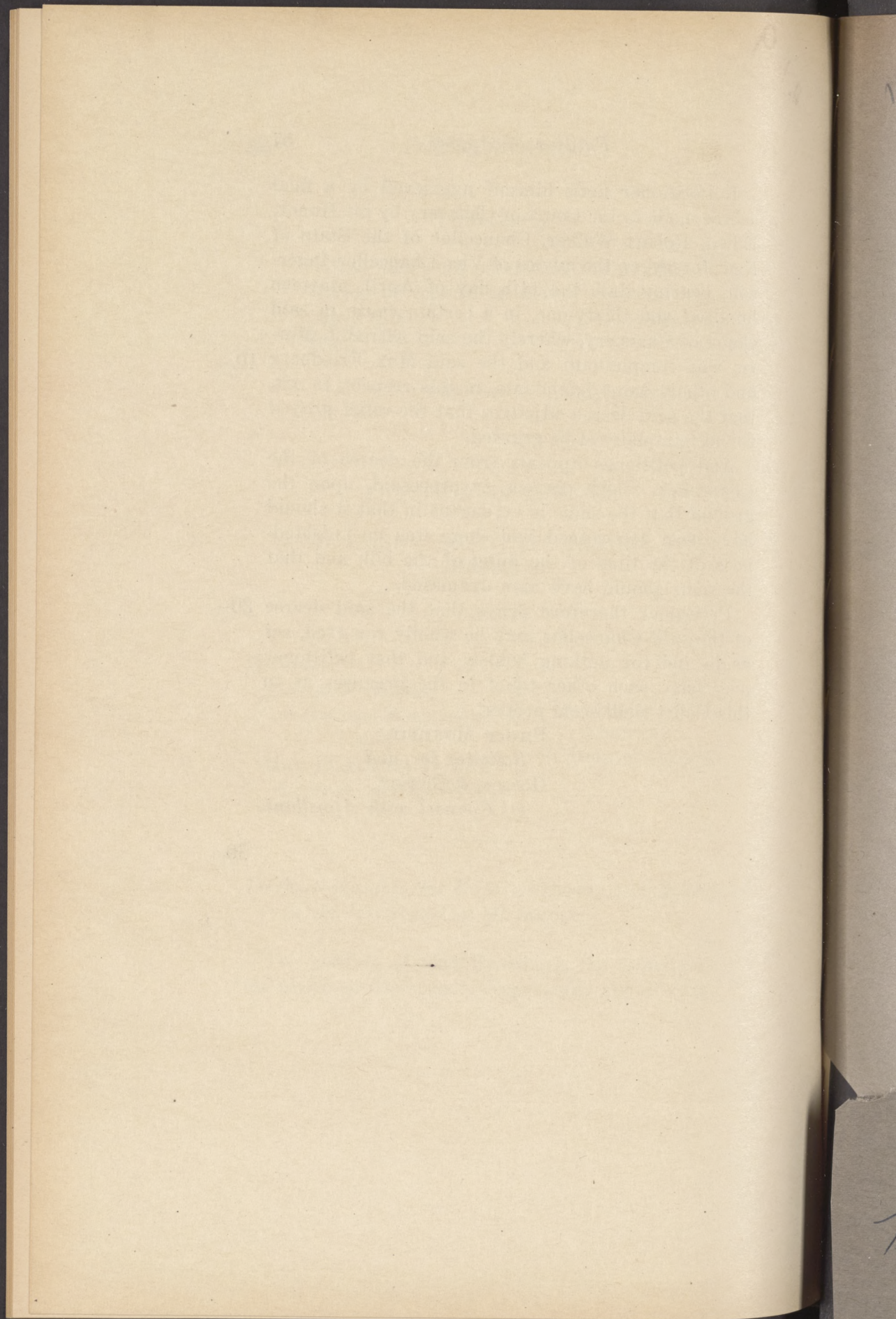
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1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Ingersoll, bearing date the 14th day of April, nineteen hundred and thirty-one, in a certain cause in said Court of Chancery, wherein the said Alfred J. Morris was complainant and the said Max Friedberg and others were defendants, in this respect, to wit, that the said decree adjudges that the relief prayed for by complainant be granted. 10

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

Petitioner therefore prays that the said decree 20 of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

PHILIP MONHEIT,
Solicitor for, and
GORSON & GORSON,
Of Counsel with Appellant.



11-1
19 FEB.T.1932

New Jersey Court of Errors and Appeals

Between

ALFRED J. MORRIS,
Complainant-Respondent,

and

MAX FRIEDBERG, *et als.,*
Defendants-Appellants.

Brief of Complainant- Respondent

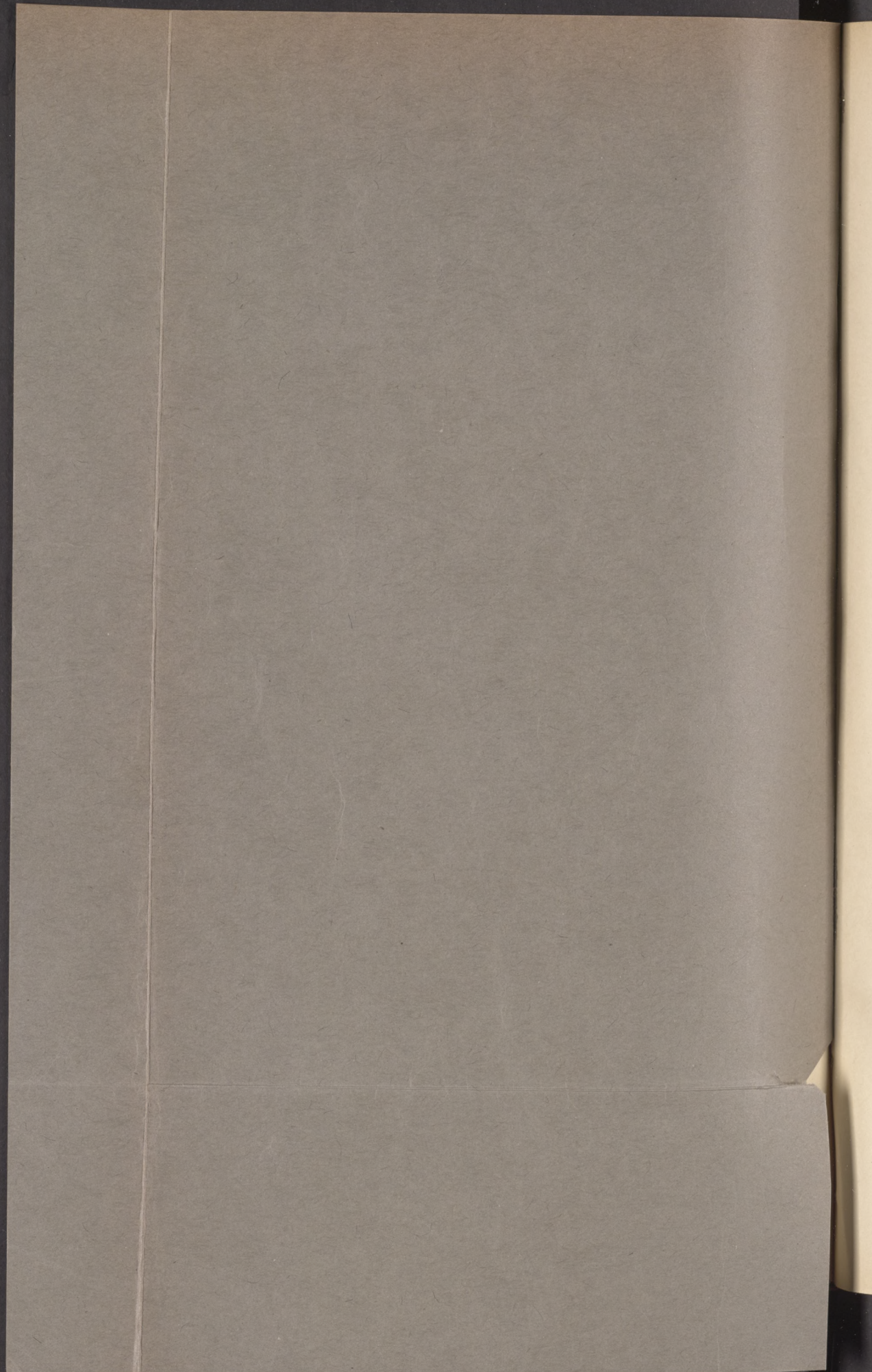
ALBERT C. ABBOTT,
*Solicitor for Complainant-
Respondent.*

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

True & legitime of the
written Brief acknowledged this
1st day of October, 1931.

Alfred J. Morris
of City of New York

Plis for Defendants - Appellants



NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

ALFRED J. MORRIS,
Complainant-Respondent,

and

MAX FRIEDBERG, *et als.*,
Defendants-Appellants.

BRIEF OF COMPLAINANT-RESPONDENT.

FACTS.

On March 26, 1929, Max Friedberg, the defendant-appellant, being indebted to Alfred J. Morris, the complainant-respondent, in the sum of five thousand dollars (\$5,000.00), executed to him a bond, together with a mortgage, to secure that sum. The said sum was to be paid in regular installments.

The said Alfred J. Morris constituted one, Walter T. Reed, his agent, to receive the payments aforesaid.

Thirty-eight hundred dollars (\$3800.00) of the principal was paid over to the said agent and duly

turned over to the complainant-respondent. There remained due and owing on the said indebtedness the sum of twelve hundred dollars (\$1200.00).

The defendant-appellant, in payment of this remaining twelve hundred dollars (\$1200.00) executed a note to the Guarantee Realty Co., for that sum, which was duly negotiated, and the cash obtained by the agent of the complainant-respondent, but said twelve hundred dollars (\$1200.00) was never received or turned over to the complainant-respondent.

The said Walter T. Reed was not an officer of the company nor is there any testimony to show that he was a stockholder in the said company.

The single question to be determined is "Was payment by note to the Guarantee Realty Co., which note was duly negotiated, payment, in fact, to Alfred J. Morris, the complainant-respondent?"

ARGUMENT.

In order for Max Friedberg, the defendant-appellant, to receive credit for the note which he gave the Guarantee Realty Co., it must be shown that the Guarantee Realty Co. was the agent of Alfred J. Morris, the complainant-respondent.

Alfred J. Morris, on page 36 of the State of the Case, testified as follows:

"Q. Did you tell him (Mr. Reed, agent), at any time to accept the note for the \$1200?"

A. No, sir.

Q. When was the first time that you knew that a note had been given for \$1200?

A. I didn't know a note had been given until after Mr. Reed's arrest and I put it in your hands." (Meaning solicitor for complainant-respondent.)

Again on page 38 of the State of the Case, Alfred J. Morris testified as follows:

"Q. Did you ever have any dealings with the Guarantee Realty and Finance Company?

A. No, sir.

Q. In any way?

A. No, sir.

Q. Did you authorize Mr. Reed to accept the note?

A. No, sir."

The foregoing testimony clearly shows that Mr. Reed, the agent, who had been accepting payments of principal and interest, was never authorized to accept a note in payment on account of the principal of the mortgage. He was authorized to accept only payment in cash and so far as the Guarantee Realty Co., accepting payment of either principal or interest for Mr. Morris, the complainant-respondent, the said company was without any authority whatsoever.

The agent, Walter T. Reed, was not an officer of the Guarantee Realty Co., and there is no testimony to show that he was a stockholder of the said company.

Mr. Reed, on page 18 of the State of the Case, testified as follows:

“Q. Mr. Reed, were you an officer of the Guaranty Realty & Finance Company?

A. No, sir.

Q. What connection did you have with the Guaranty Finance Company?

A. I was manager of the company.”

Again Walter T. Reed, who was the agent and only witness produced by the defendant-appellant, testified on page 27 of the State of the Case as follows:

“Q. Do you know what his (Alfred J. Morris) understanding was, whether he was doing business with you personally or with the Guaranty Realty Company?

A. Well, that is for him to say. I would say offhanded he was doing business with me, he thought he was doing business with me.

Q. Personally?

A. Yes. Of course, he knew the company was there. The sign was on the window and all, and that was my company. I explained it to him, the situation.

Q. Did he authorize you, personally, to collect the principal and interest, or did he authorize the Guaranty Realty & Finance Company?

A. No, he would authorize me.

Q. He would authorize you, personally?

A. Yes, because he wrote all his letters direct to me, personally. I don't think he ever wrote a letter to the Guaranty Realty Company.”

The testimony of both Mr. Morris and Mr. Reed, the agent, conclusively shows that Mr. Morris at no time had any dealings with the Guarantee Realty Co., and to him the company was a total stranger and in no way did it have the authority to act as Mr. Morris' agent.

An agent does not have authority to accept payments on account of principal and interest for his principal in any other manner than in cash unless he has specific authority to do so.

Huffcut on Agency, page 145.

It is to be observed that there is not one scintilla of evidence showing that Mr. Friedberg at any time questioned the agent's authority to accept this note for his principal. To say the least, the transaction was an unusual one where an agent is taking a note for the payment of principal on the mortgage. Surely, the least Mr. Friedberg, the mortgagor, could have done would have been to see or ascertain by what authority Mr. Reed had the right to accept the note for the payment of principal on the mortgage, and not having ascertained by what authority the agent had in accepting this note and the note having been given by Mr. Friedberg and the proceeds of said note flowing in the wrong channels, he surely is responsible for the money not going into the hands of the mortgagee.

To further show the carelessness of Mr. Friedberg in giving this note, the note was not made payable to Mr. Reed, as agent, but was made to the Guarantee Realty Co., which in turn was endorsed to Mr. Reed who then received the proceeds of the note by discounting the same at a bank. So in the

final analysis Mr. Friedberg never gave a note to the agent but made a note to a corporation which was a stranger altogether to Mr. Morris, the complainant-respondent.

Of course, the whole case hinges upon a question of fact, whether Mr. Morris ever gave Mr. Reed authority to accept this note in payment of the mortgage and Vice-Chancellor Ingersoll, who sat below and heard the testimony of the witnesses, came to the conclusion that Mr. Morris never authorized Mr. Reed to accept a note in payment of principal upon the mortgage and he found that the giving of the note and the latter payment of it by Mr. Friedberg was not a payment on account of the principal of this mortgage and advised a decree in accordance therewith.

I respectfully submit that the findings of Vice-Chancellor Ingersoll should not be disturbed and should be sustained by this court.

ALBERT C. ABBOTT,
*Solicitor for Complainant-
Respondent.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

ALFRED J. MORRIS,
Complainant-Respondent,

and

MAX FRIEDBERG, *et als.,*
Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT.

FACTS.

On March 29, 1926, Max Friedberg, the defendant-appellant, being indebted to Alfred J. Morris, the complainant-respondent in the sum of \$5,000.00, executed to him a bond, together with a mortgage, to secure that sum. The said sum was to be paid in regular installments.

The said Alfred J. Morris constituted one Walter Reed and/or the Guarantee Realty Co., his agents to receive the payments aforesaid.

\$3800.00 of the principal was paid over to the said agent and duly turned over to the complainant-re-

spondent. There remained due and owing on the said indebtedness the sum of \$1200.00.

The defendant-appellant, in payment of this remaining \$1200.00, executed a note to the Guarantee Realty Co., for that said sum, which was duly negotiated, and the cash obtained by the agent of the complainant-respondent, but said \$1200.00 was never received or turned over to the complainant-respondent.

The single question to be determined is, "Was payment by note to the Guarantee Realty Co., which note was duly negotiated, payment in fact to Alfred J. Morris, the complainant-respondent?"

ARGUMENT.

The contention of the complainant-respondent is that the payment by note, made by Max Friedberg, the defendant-appellant, was not in fact payment to him, that no authority was ever given to the agent to take payment of the \$1200.00 due, by note.

The Court's attention is respectfully directed to the testimony of Walter Reed, on page 23 of the State of the Case, where it clearly appears that express authority was given by Mr. Morris to his agent to accept the note, in payment of the balance due.

This testimony is corroborated, if not in full, at least in the fact that Mr. Morris had knowledge that Mr. Reed was contemplating taking a note in payment, by the testimony of the complainant, himself, at page 14 of the State of the Case:

“—He (meaning Mr. Reed) said Mr. Friedberg had offered him a note. I would think about that and that is all I ever knew, and *I am still waiting for him to think about it.*”

By the testimony of this complainant, it clearly appears that he was governed entirely by the discretion to be exercised by Reed in the matter.

And further, at page 15 of the State of the Case, the complainant, in answer to the following question:

“Well, you did testify that you had some correspondence with him (meaning Reed) about a note?”

said:

“Yes, he asked me; he said Mr. Friedberg had stopped in to see him and he was talking about accepting a note but he (meaning Mr. Reed) said, ‘I don’t know whether that will be right or not,’ *and then, I still waited to see what he was going to do.*”

Having then been made aware of the fact that Friedberg had offered a note in payment of the indebtedness and that his duly authorized agent was considering accepting that note, Mr. Morris uttered not a word, nor did he, by any sign, indicate his unwillingness that such a course should be followed, but did, in fact, leave the matter entirely in the hands of Reed. Testimony of Morris at page 15 of the State of the Case.

It clearly appears from the foregoing that Mr.

Morris, the complainant, expressly authorized his agent to use his discretion in the matter and placed implicit faith in his decision, willing to abide by it.

Throughout the entire period of the payment of this mortgage which continued over a term of approximately three years the matter of collecting and arranging of the terms, granting of extensions, had been left entirely in the hands of Reed or the Guarantee Realty Co. At no time during this entire period did Morris, the complainant-respondent, enter upon the scene. The time of collection, the manner, and place of payment were throughout arranged by Reed. At no time did Morris protest in any manner as to any act of either Reed or of Friedberg, the defendant-appellee.

Heckel v. Country Club, 97 L. 538.

A principal is bound by the acts of his agent within the authority he has actually given him *which includes not only the precise act which he expressly authorizes him to do but also whatever usually belongs to the doing of it, or is necessary to its performance*. Beyond that, he is liable for the acts of the agent within the appearance of authority which the principal himself knowingly permits the agent to assume, or which he holds the agent out to the public as possessing. For the acts of the agent, within his express authority the principal is liable, because the act of the agent is the act of the principal. For the acts of the agent within the scope of his authority he holds the agent out as having or knowingly permits him to assume, the principal is made responsible because to permit him to dis-

pute the authority of the agent in such cases, would be to enable him to commit a fraud upon innocent persons.

The learned Vice-Chancellor, in his conclusions (page 49 of the State of the Case) concludes that by reason of the receipt, Exhibit D11, given by Reed for the note in question, the defendant-appellant was made aware of the unusual character of the transaction. It would seem, on the contrary, that the defendant-appellant, dealt at arms length at all times with the agent and attempted, by this receipt, to be secured by having the transaction fully explained therein. Morris, therefore, imposed the confidence and trust, while Friedberg looked always askance.

“The rule is fundamental that when one of two innocent parties must suffer, the loss must fall upon him who reposed the confidence, and thereby made the loss possible.”

Wysokowsky v. Polish-American B. & L.,
95 N. J. L. 352.

The learned Vice-Chancellor further in his conclusions, at page 51 of the State of the Case, alludes to the fact that the note here in question was made to the order of the Guarantee Realty Co. rather than to Alfred J. Morris or to Reed. The Court's attention is respectfully directed to the checks here in evidence by which payment was made on the indebtedness, the great majority of which are made payable to the Guarantee Realty and Finance Co., which fact was never protested by the complainant.

The headnote of the case of *Dierkes v. Hauxhurst Land Co.*, 80 N. J. L. 369, says:

“The authority of an agent to do certain acts on behalf of his principal, may be inferred from the continuance of the acts themselves over such a period of time and the doing of them in such a manner, that the principal would naturally have become cognizant of them and would have forbidden them if unauthorized.”

The learned Vice-Chancellor further finds that the giving of the note was so out of the ordinary course of things and was of such a nature that the agent had no authority to receive it in payment of the debt. We wish to point out to this Honorable Court the exact nature of the previous dealings of the parties. In no case, had actual cash been paid to the agent, which he had, in turn, forwarded to his principal. Each payment up to the last had been paid by check, which was, in turn, negotiated by the agent and the money turned over to the principal. We submit to this Court that exactly the same procedure was followed in this last payment. Although there can be no serious contention, that, in the everyday, business world, there is some distinction between payment by check and by note, yet we contend that, in the instant case, the distinction is one without a difference. As the agent had, on previous occasions, negotiated the checks and had received cash therefor, in this case he negotiated the note and also received the cash, which he now appropriated to his own use, failing to forward it to his principal. We may, for the moment, even admit that this agent was unauthorized to receive the note in payment, and, had the note been presented to Morris, he may

have rightfully refused to accept it, but, as appears in this case, this note was never presented to him, but was immediately negotiated by the agent, as had been the checks before, and the cash immediately obtained. We submit that the loss suffered by the misappropriation of these funds must be suffered by the principal for it is fundamental that the acts of the agent are the acts of the principal.

The appellant, therefore, submits to this Honorable Court that the findings of the learned Vice-Chancellor were erroneous, that it should have been determined by him that there was no indebtedness at the time of the filing of the bill, and that the same should have been dismissed.

PHILIP MONHEIT,
Solicitors for Appellants and
GORSON and GORSON,
Of Counsel with Appellants.

