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**Notice of Appeal.**

IN CHANCERY OF NEW JERSEY.

UNITED STATES FIDELITY & GUAR- ANTEE COMPANY, a corporation, Complainant,	} Notice of Appeal.	10
vs.		
UNITED STEEL CONSTRUCTION COMPANY, a corporation, Defendant.		

To:

Messrs. COLE & COLE,  
Solicitors of M. B. Markland Company.

TAKE NOTICE that Charles F. Seabrook, Receiver  
of the United Steel Construction Company, a cor-  
poration of the State of New Jersey hereby appeals  
from the order made in the above entitled cause on  
the 7th day of March, 1929 ordering that the notice  
filed by the said receiver under and in pursuance  
of the said municipal lien act be set aside and for  
nothing holden, and that the lien created by the  
filing of said notice be and the same is released,  
and further ordering that the petitioner have his  
costs taxed in which shall be included a counsel fee  
of one hundred dollars (\$100) to the Court of  
Errors and Appeals in the last resort in all causes.

Dated, March 15th, 1929.

INSLEY, VREELAND & DECKER,  
Solicitors for and of Counsel with  
Charles F. Seabrook, Receiver, &c.

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

WILLIAM E. DECKER, 40  
Of Counsel with Charles F.  
Seabrook, Receiver, &c.

**Petition of Appeal.**NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10	UNITED STATES FIDELITY & GUAR- ANTY COMPANY (Charles F. Sea- brook, Receiver, etc), <p style="text-align: right;">Appellant,</p> <p style="text-align: center;">vs.</p> UNITED STEEL CONSTRUCTION COM- PANY (M. B. Markland Co.), <p style="text-align: right;">Respondent.</p>	} On Appeal to Court of Chancery. Petition of Appeal.
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20 To the Honorable the Court of Errors and Appeals in the last resort in all causes .

The petition of Charles F. Seabrook, Receiver, etc. the appellant in the above entitled cause, respectfully shows that :

30 1. Petitioner is aggrieved by an order made in the Court of Chancery, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey advised by Robert H. Ingersoll, Vice-Chancellor, bearing date the 7th day of March, 1929 in a certain cause in said Court of Chancery, wherein the United States Fidelity & Guaranty Company was complainant, and the United Steel Construction Company was defendant, in this respect, to wit: that said order directed that the notice filed by Charles F. Seabrook, Receiver, etc. under and in pursuance of the Municipal Lien Act be set aside, and for nothing holden, and that the lien created by the filing of said notice be relieved.

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*Petition of Appeal.*

2. Petitioner appeals from the entire order which decrees as aforesaid on the ground that the same is erroneous in that the Chancellor was without authority in law to make said order, and that it was improperly and improvidently made.

Petitioner therefore prays that the order of said Chancellor may be wholly reversed, set aside and for nothing holden, and that the petitioner may have such other relief in the premises as to this court may seem proper. **10**

INSLEY, VREELAND & DECKER,  
Solicitors for and of Counsel  
with Charles F. Seabrook,  
Receiver (Appellant).

**20****30****40**

**Answer to Petition of Appeal.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10	<p>Between            UNITED STATES FIDELITY &amp; GUAR-            ANTY COMPANY (Charles F. Sea-            brook, Receiver, &amp;c.),  <div style="text-align: right; margin-right: 20px;">Appellant,</div>   <div style="text-align: center;">and</div>             UNITED STEEL CONSTRUCTION COM-            PANY, (M. B. Markland Co.),  <div style="text-align: right; margin-right: 20px;">Respondent.</div> </p>	<p>On Appeal            from Court            of Chancery.            Answer to            Petition            of Appeal.</p>
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20      The answer of M. B. Markland Co., a corporation of the State of New Jersey, one of the above named respondents, to the petition of appeal of United States Fidelity & Guaranty Company (Charles F. Seabrook, Receiver, &c.), the above named appellant.

30      This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that an order was, on March 7th, nineteen hundred and twenty-nine, made and entered in the Court of Chancery of New Jersey, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, advised by Robert H. Ingersoll, Vice Chancellor, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order this

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*Answer to Petition of Appeal.*

respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes that the said order is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this respondent.

COLE & COLE,  
Solicitors for and of Counsel with  
M. B. Markland Co., Respondent.

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**Petition of M. B. Markland Co.,  
a Corporation, Etc.**

IN CHANCERY OF NEW JERSEY.

10	Between UNITED STATES FIDELITY & GUAR- ANTY COMPANY, a corp., &c., Complainant, and UNITED STEEL CONSTRUCTION COMPANY, a corp., &c., Defendant.	}	On Peti- tion, &c. Petition of M. B. Mark- land Co., a corp. &c.
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TO THE HONORABLE EDWIN ROBERT WALKER,  
*Chancellor of the State of New Jersey:*

20 The petition of M. B. Markland Co., a corpora-  
tion of the State of New Jersey, respectfully shows:

1. By an agreement in writing under seal, it  
agreed with Atlantic City, a municipality, to con-  
struct a Convention Hall on its property in Atlantic  
City, N. J., for the consideration of \$4,532,050 for  
the superstructure.

30 2. Thereafter it entered into a written contract  
with United Steel Construction Company, a cor-  
poration of the State of New Jersey, in and by  
which it agreed to do certain work in aid and  
furtherance of its contract with said City.

40 3. It defaulted in the performance of its con-  
tract and thereafter Charles F. Seabrook, in pro-  
ceedings entitled as above, was appointed Receiver,  
who proceeded with the work for a time to perform

*Petition of M. B. Markland Co.*

the contract of said Construction Company but later abandoned the work before it was fully and completely performed.

4. Upon the abandonment of said contract by the Receiver, petitioner proceeded to perform said contract for him and finally completed the same. It cost petitioner more than \$100,000 in excess of the amount it agreed to pay said Construction Company for the performance of said contract and has filed its claim with the Receiver, and which was filed before the Receiver filed his lien claim hereinafter referred to. Said Receiver has not yet disputed said claim, nor called upon petitioner to prove the same. 10

5. On or about the 20th day of December, 1928, said Receiver filed a claim with the City of Atlantic City against petitioner in which he claims there is due from it to the Receiver the sum of \$115,723.24, a copy of which lien is hereto, made part hereof, together with an itemized statement of claim accompanying said notice. 20

6. On the 16th day of January, 1929, there will be due petitioner from Atlantic City under the contract referred to the sum of \$105,000., being the payment certified to be due at that time by the Architects representing Atlantic City. The Comptroller has informed petitioner that no part of said payment will be made because of the lien claim filed by the Receiver. 30

7. Petitioner has entered into a bond with Atlantic City, and which has been accepted by it in the sum of \$4,532,050 for the faithful perform- 40

*Petition of M. B. Markland Co.*

ance of its contract for the completion of said Convention Hall.

8. Exclusive of the said sum of \$105,000 due from Atlantic City to petitioner, there is to become due under the terms of the contract and when the same is completed, the sum of \$441,153., and petitioner has unpaid obligations for work done and materials furnished in performance of its contract the sum of \$200,000.

9. Petitioner is not indebted to the Receiver in any sum, but, to the contrary, there is an indebtedness from the Receiver to it in the sum stated.

10. Petitioner needs the payment of \$105,000 due January 16th instant as stated in order to pay for labor and materials performed and used in the completion of its contract, and if said sum is retained by Atlantic City because of the Receiver's claim it will greatly embarrass petitioner and may delay the completion of said Convention Hall.

Petitioner therefore prays that the Receiver be ordered to withdraw the said lien claim, or be required to look to the final payment due from the City to petitioner for the payment of any sum that may finally be determined to be due the Receiver, or that petitioner be given such other relief as may be agreeable to equity.

And petitioner in duty bound will ever pray, &c.

M. B. MARKLAND Co.,  
By EMILE E. ESTOCLET,  
Vice-President.

COLE & COLE,  
Solicitors for Petitioner.

*Petition of M. B. Markland Co.*

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

EMILE E. ESTOCLET, being first duly sworn according to law upon his oath says:

I am the Vice President of M. B. Markland Co., a corporation of the State of New Jersey, and am familiar with its affairs, and especially with relation to the contract between it and Atlantic City concerning the construction of the Convention Hall. 10

I have read the petition attached and say that the statements therein contained are true in so far as they are within my own knowledge and otherwise I believe them to be true.

It is true that on January 16, 1929, there will be due from Atlantic City to M. B. Markland Co., on account of work done and materials furnished in the completion of the contract of the Convention Hall the sum of \$105,000; it is likewise true that after that payment is due there will be a balance due of \$441,153 upon completion of the Convention Hall and that at this time petitioner does not owe on account of said Convention Hall a sum in excess of \$200,000; all bills being paid except retained percentages from subcontractors and some of whom have been paid. 20 30

Petitioner does need the payment due January 16th instant in order to avoid possible embarrassment and in order that the sum due may be used in the payment of labor performed and materials furnished in aid of the completion of the contract.

Your petitioner is under bond filed with the City and accepted by it in the sum of \$4,432,050 guaranteeing the faithful performance of the contract. 40



*Petition of M. B. Markland Co.*

To the City of Atlantic City, a municipal corporation of the State of New Jersey, and to the Mayor or head officer of the Commissioners of the City of Atlantic City, in the County of Atlantic and State of New Jersey, and to the Clerk of the City of Atlantic City, in the County of Atlantic, and State of New Jersey :

10

NOTICE is hereby given to you, and to each of you by Charles F. Seabrook, the Receiver of the United Steel Construction Company, an insolvent corporation of the State of New Jersey, as follows :

1. Charles F. Seabrook who gives this notice is a resident of Bridgeton, in the County of Cumberland and State of New Jersey.

2. The United Steel Construction Company is a corporation of the State of New Jersey organized under the laws of the State of New Jersey. Charles F. Seabrook was appointed its receiver by an order of the Chancellor made the 26th day of January, 1928, under the authority of an act of the Legislature of the State of New Jersey, entitled "An Act concerning corporations (revision of 1896)", together with its amendments and supplements under which order said Seabrook qualified as receiver and has since, and is now acting, and under and by the terms of which order, and the act of the Legislature aforesaid, the assets of the United Steel Construction Company passed to the said Charles F. Seabrook as receiver. A copy of the order is attached and made a part hereof and is marked "Schedule #1".

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3. The United Steel Construction Company prior to the appointment of the undersigned as its

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*Petition of M. B. Markland Co.*

receiver, and the undersigned as receiver of the United Steel Construction Company since his appointment has performed labor and furnished materials which have actually been performed and used in the erection and completion of a certain building known as the "Convention Hall" situate between the Boardwalk, and Pacific Avenue, and  
10 between Mississippi Avenue and Georgia Avenue, in the City of Atlantic City, in the County of Atlantic and State of New Jersey. The name of the person by whom the United Steel Construction Company and the undersigned were employed, and to whom the said labor and materials were furnished is M. B. Markland Co., a corporation of the State of New Jersey. Said M. B. Markland Co., a corporation of the State of New Jersey is  
20 the contractor with the City of Atlantic City. The work done by the said M. B. Markland Co. was done by it under a contract between it and the City of Atlantic City, a municipal corporation of the State of New Jersey whereby the said M. B. Markland Co. agreed to provide the labor and material for the general construction of the Convention Hall at Atlantic City, New Jersey, according to the plans and specifications made by Lockwood, Greene & Company, Inc., Architect, and Alexander  
30 H. Nelson, Associate Engineer.

4. The amount claimed by the undersigned is the sum of one hundred fifteen thousand, seven hundred twenty-three dollars and twenty-four cents (\$115,723.24) from M. B. Markland Co., the contractor with the City of Atlantic City, as aforesaid. An itemized statement of the items making up the amount of this claim is attached hereto and made a part hereof, and is marked "Schedule #2".  
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*Petition of M. B. Markland Co.*

5. The said sum of one hundred fifteen thousand seven hundred twenty-three dollars, and twenty-four cents (\$115,723.24) is due to the undersigned from M. B. Markland Co., after deducting all just credits and offsets.

6. Said sum of money is due for labor and materials performed and furnished to the said M. B. Markland Co., the contractor as aforesaid, with the City of Atlantic City, and said labor and materials were actually performed and used in the erection and completion of the Convention Hall at Atlantic City, New Jersey, as described aforesaid, and used by the said M. B. Markland Co. in the completion of its said contract with the City of Atlantic City, aforesaid. Said labor and materials furnished by the United Steel Construction Company and the undersigned to the said M. B. Markland Co. and used as aforesaid were furnished under a contract dated April 16th, 1927, between the said M. B. Markland Co. and the United Steel Construction Company.

For the full value of the said labor and materials furnished as aforesaid a lien is claimed by the undersigned upon the money in the control of the City of Atlantic City, a municipal corporation of the State of New Jersey, due or to grow due under the said contract between it and the said M. B. Markland Co.

Dated, December 14th, 1928.

CHAS. F. SEABROOK (signed)  
Receiver of United Steel  
Construction Company.

*Petition of M. B. Markland Co.*

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

10 CHARLES F. SEABROOK being duly sworn according to law on his oath deposes and says: I am the receiver of the United Steel Construction Company, and the claimant named in and who signed the foregoing lien claim. I have read the foregoing notice of lien claim and all of the matters and facts therein stated are true.

CHARLES F. SEABROOK.

Sworn and subscribed to before me }  
 this 19th day of December, 1928. }

20 A. LEONARD ROBERTS  
 Master in Chancery of New Jersey.

30

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## Schedule "1".

## IN CHANCERY OF NEW JERSEY.

UNITED STATES FIDELITY & GUAR- ANTY COMPANY, a corporation, etc.,  Complainant,  vs.  UNITED STEEL CONSTRUCTION COM- PANY, a corporation, etc., Defendant.	}	Order for Injunction & Receiver.	10
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This matter being opened to the court by Insley, Vreeland & Decker, of counsel with the complainant in the above entitled cause, in the presence of Emanuel Weitz, of counsel with the defendant, and upon reading and filing the bill of complaint and affidavit thereto annexed, and the answer of the defendant, and it appearing to the Court that the business of the defendant United Steel Construction Company has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders, and that a receiver for the defendant company should be appointed by this court to take charge of and administer all of its assets and property :

IT IS thereupon on this 26th day of January, 1928, ORDERED, ADJUDGED AND DECREED as follows :

1. That Charles F. Seabrook of Bridgeton, Cumberland County, in the State of New Jersey be and he is hereby appointed receiver of the defendant United Steel Construction Company a corporation of the State of New Jersey, and of all its assets and

*Schedule "I".*

10 property of every character and description, whatsoever situate with full power and authority to demand, sue for, collect and receive, and take into his possession all of the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of any and every description belonging to the said defendant United Steel Construction Company or to which it may be entitled, and to sell, convey and assign any or all of the real and personal estate of said corporation, and to do and perform all of the duties imposed upon it and required by law and especially by an Act of the Legislature of the State of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the acts supplementary thereto and amendatory thereof.

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2. And it is FURTHER ORDERED that the said receiver before entering upon the discharge of his duties shall take the oath of office described by law and shall also enter into bond with one or more surety or sureties in the penal sum of \$25,000, conditioned for the faithful performance of his duties which said bond shall be approved as to the form and security thereof by Francis Child, one of the

30 Special Masters of this Court.

3. And it is FURTHER ORDERED that the said receiver shall take possession of all the property and assets of said defendant corporation and account for the same as this court shall hereafter direct, and that the said defendant corporation, its officers, directors and agents, shall forthwith assign, transfer, convey and deliver to the said receiver all

40 of the property and assets of the said corporation,

*Schedule "1".*

both real and personal, whatsoever situated and of whatsoever it may consist.

4. And it is FURTHER ORDERED that the said defendant corporation, its officers and agents, and all persons claiming under it, shall be, and they are hereby restrained from interfering with said receiver taking possession of and managing said property, and that all persons whatsoever, and especially the creditors of the said defendant corporation, shall be, and they hereby are, restrained from bringing any action or proceedings at law or otherwise against the said corporation and from taking any further proceedings in any action or proceeding heretofore commenced. 10

5. And it is FURTHER ORDERED that the said receiver be and he is hereby is authorized and empowered, until the further order of this court, to conduct and to continue to conduct the business of the said defendant corporation without interruption, and fulfill the contracts (other than indebtedness of the said defendant) made by the said defendant until further order in the premises, and to purchase and pay out of the income and profits of money, assets, and effects, from time to time, coming into his hands as such receiver for the necessary supplies for the purposes aforesaid, and to collect and pay all needful agents and servants and generally to do all acts and things proper or necessary to be done to protect the property and rights of which he is hereby appointed receiver for the benefit of the creditors and stockholders of the said company, with leave to apply from time to time whenever necessary, and as he may be advised for instructions touching all and 20  
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*Schedule "1".*

singular his rights, duties and liabilities in the premises.

10 6. It is FURTHER ORDERED that the creditors and stockholders of the said defendant corporation show cause before the Chancellor at Chancery Chambers, in the City of Newark, in the State of New Jersey, on Tuesday, the 28th day of February next at 10:30 o'clock in the forenoon why the appointment of said receiver should not be continued.

20 7. It is FURTHER ORDERED that the said receiver shall within seven days from the date hereof, mail to each of the creditors and stockholders of the defendant corporation, at his, or her, or their last known post office address a copy of this order.

EDWIN ROBERT WALKER,  
Chancellor.

Respectfully advised,

ALONZO CHURCH,  
Vice Chancellor.

30 I consent to the entry of the above order.

EMANUEL WEITZ.

40

## Schedule "2".

## TOOLS &amp; EQUIPMENT LOST OR DESTROYED DURING CONTINUANCE OF WORK.

4 10" Steel Snatch Blocks	@	\$6.00 ea.	\$24.00	
14 10" " " "	@	7.50 ea.	150.00	
1 12" Wood Snatch Block	@	2.50 ea.	2.50	
1 Desk 30"x48"	@	8.00 ea.	8.00	
5 Chairs	@	.50 ea.	2.50	
4 Pieces 50' lengths 3/4"	@	6.00 per piece	24.00	10
4 " 50' " 1/2"	@	4.00 " "	16.00	
1 Lot 53 Pieces 2"x10" Lumber 2111 BMF	@	20.00 Per M	42.22	
1 Lot 2841 pieces 2"x12" " 113607 BMF	@	20.00 Per M	2272.16	
1 Lot 350 pieces 3"x10" " 17500 BMF		20.00 "	350.00	
1 Lot 4 pieces 3"x10" 288 BMF		20.00 "	5.76	
1 Lot 16 pieces 4"x6" Lumber 896 BMF		20.00 "	17.92	20
1 Lot 5 pieces 4"x12" " 320 BMF		50.00 "	16.00	
1 Lot 6 pieces 4"x14" " 335 BMF		50.00 "	16.75	
1 Lot 3 pieces 6"x12" " 324 BMF		20.00 "	6.48	
1 Lot 6 pieces 8"x8" " 447 BMF		20.00 "	8.94	
1 Lot 3 pieces 12"x12" " 648 BMF		30.00 "	19.44	30
1 Lot 27 pieces 12"x12" " 8412 BMF		25.00 "	210.30	
4 3/4" Bibs	@	.25 ea.	1.00	
39 3/4" Globe Valves	@	.75 ea.	29.25	
4 2" Globe Valves	@	2.00 ea.	8.00	
2 #400 Champion Forges	@	9.00 ea.	18.00	
1 6" Bell	@	.75 ea.	.75	
1 8" Bell	@	1.00 ea.	1.00	40

## Schedule "2".

	37 Turnbucks 7/8"x24"	@	1.15 ea.	42.55
	2 Turnbucks 2 1/2" with Fair Leads	@	25.00 ea.	50.00
	20 Spreader Hooks	@	3.00 ea.	60.00
	2300 5/8" Cable	@	.03 ea.	69.00
	1850 1" Cable	@	.07 ea.	129.50
	4 Derrick Guys	@	15.00 ea.	60.00
	3 Jumping Guys	@	5.00 ea.	15.00
10	14 5/8" Chokers	@	.50 ea.	7.00
	6 3/4" "	@	.75 ea.	4.50
	3 1 1/4" "	@	1.50 ea.	4.50
	1 Spreader	@	3.00	3.00
	1400 1/4" dia. Manila Rope	@	.02 per ft.	28.00
	65 3/4" Button Head Rivet Snaps	@	.80 ea.	52.00
	60 13/16" " " " "	@	.85 ea.	51.00
	59 7/8" " " " "	@	.90 ea.	53.10
	7 15/16" " " " "	@	.95 ea.	6.65
20	23 1" " " " "	@	1.00 ea.	23.00
	3 Heating Tongs	@	.40 ea.	1.20
	7 7/8" Spring Dolly Bars	@	1.85 ea.	12.95
	2 7/8" Club Dolly Bars	@	1.55 ea.	3.10
	3 7/8" Saddle Dolly Bars	@	1.85 ea.	8.55
	1 7/8" Backing Out Punch	@	.35 ea.	.35
	8 1 1/2" Side Cutter	@	.50 ea.	4.00
	2 5' Crew Bars	@	.50 ea.	1.00
	6 3/4"x36" Connecting Bars	@	.25 ea.	1.50
30	4 7/8" Twist Drills	@	.75 ea.	3.00
	2 8 lb. Mauls	@	.50 ea.	1.00
	1 Fuller Blot Machine	@	15.00 ea.	15.00
	1 24" Carpenter Square	@	.75 ea.	.75
	1 Hand Axe	@	.50 ea.	.50
	1 3 1/2" Carpenter Adz	@	.50 ea.	.50
	3 Carpenter Bits 3/4"—1" & 7/8"	@	.25 ea.	.75
	67 3/4" Structural Wrenches	@	.18 ea.	12.06
	30 7/8" " " "	@	.20 ea.	6.00
	20 1" " " "	@	.25 ea.	5.00
40				
			Total	\$3986.98

## Schedule "2".

STATEMENT OF CHARGES FOR WORK AND EXTRA WORK PERFORMED  
BY CLAIMANT.

STATEMENT to March 17, 1928, on Convention Hall, Atlantic City, N. J.

Mar. 17 Steel erected to Mar. 17th

(6015)

11600 of \$290,000)	\$150375.00	10
6% Interest on short payments to 3/20		
Aug. bill 337.50 due Sept. 20th	10.15	
Sept. " 10237.50 due October 20th	255.95	
Oct. " 5175.00 due Nov. 20th	103.52	
Nov. " 6750.00 due Dec. 20th	101.25	
Jan. " 4050.00 due Feb. 20th	20.25	
	<hr/>	
	\$150866.12	
Less Interest on overpaid amount :		20
Dec. bill 900.00 due Jan. 20th	9.00	
	<hr/>	
	\$150857.12	

1927	Bill for Extra Work, etc.		
10/14	Delay in steel Sec. 7 (See bill 3/26)	771.55	
10/14	" " " " 7 (for Bal)	546.00	
10/14	Extra work a/c Markland Co.	34.50	
11/21	" " Change Order 3 & 4	32.20	
11/21	" " a/c Markland Co.	201.10	
11/23	" " Change Order #3 & 4	18.95	30
11/23	" " a/c Markland Co. (No bill paid)	15.00	
11/26	" " a/c Markland Co.	150.00	
11/28	" " Change Order 3 & 4	9.60	
12/2	1/2 Eng. salary a/c Use of our Air Line	110.34	

## Schedule "2".

	12/14	Extra Work a/c Markland Co.	31.35	
	12/15	" " " " "	622.00	
	12/15	" " " " "	1143.00	
	12/15	" " " " "	4056.00	
	12/22	" " Change Order 1A	45.50	
	1928			
10	1/6	Extra Work a/c Change Order 2	20.00	
	2/20	" " " " " 2	85.00	
	2/20	" " " Markland Co.	114.50	
	2/21	" " " Change Order 2	2.40	
	2/27	" " " Markland Co.	182.60	
	2/29	" " " Painting	2914.57	
	3/6	Air Service W/E 3/3	7.00	
	3/20	" " W/E 3/20	32.00	
	3/21	Extra Work a/c Markland Co.	227.85	
	3/26	Bal. a/c Delay in Steel Sec. 7	287.00	
20	3/26	Cost of bringing tower steel to job	948.60	
	3/26	Delay in steel sec. 4	9853.08	
	3/26	Bal. of labor a/c painting	1478.40	
	3/26	Extra work a/c Markland Co.	266.00	
				24206.49
				<hr/> \$175063.61
		Extra Work a/c A. B. Co. Orders 1-3		
		Markland Orders 1-9 inclusive	1246.05	
30		Extra work a/c A. B. Co. Orders 4		
		Markland Orders 10-12 inclusive	178.50	
		Extra Work a/c A. B. Co. Order 5		
		Markland Orders 13-20 inclusive	629.85	
		Extra Work a/c A. B. Co. Order 6		
		Markland Orders 21-25 inclusive	258.65	
		Extra work a/c A. B. Co. Order 7		
		Markland Orders 26-32 inclusive	973.80	
		Extra work a/c A. B. Co. Order 8		
		Markland orders 33-36 inclusive	283.80	
40				

## Schedule "2".

Extra Work a/c A. B. Co. Order 9			
Markland Orders 37-43 inclusive	450.48		
Extra work a/c A. B. Co. Order 10			
Markland Order 44	310.50		
Extra work a/c A. B. Co. Order 11			
Markland Orders 45-51 inclusive	786.60		
Extra work a/c A. B. Co. 12			
Markland Orders 52-58 inclusive	609.15		10
		<u>5727.38</u>	
13 & Misc.			
Items to 3/17/28		1000.97	
		<u>\$181791.96</u>	

## Less Credits:

Payments to date a/c contract	\$95400.00		20
“ “ “ “ 11/23/27 bill	15.00		
“ “ “ “ A. B. Co. Extra work	5118.23		
	<u>\$100533.23</u>		

## Advances for Payroll 2/20-3/17 incl.

Part week end'g Feb. 23	5456.60		
“ “ “ Mar. 1st	9451.98		30
“ “ “ “ 8th	9401.75		
“ “ “ “ 15th	7593.05		
Estimate for March 16th & 17th	721.35		
	<u>\$32624.73</u>	<u>\$133157.96</u>	
		<u>\$48634.00</u>	

## Schedule "2".

## Additional Charges.

	For unloading, shorting and hauling 6015 ton steel erected to March 17th @ 5.00		30075.00
10	For unloading and sorting balance of steel received to March 17th, but not erected (10,870 ton—6015 ton) 4855 ton @ 2.50		12137.50
	For hauling equipment from Newark to Convention Hall	\$2162.08	
	Freight on Equipment shipped to Atlantic City	657.22	
	Hauling Equipment from R. R. Yard to Convention Hall	642.57	
	Total	\$3461.87	
20	M. B. Markland portion based on <u>5585</u>		
	11600 of total or	1669.36	
	Supt. & Insurance	250.40	
			1919.76
	Total Amount due		\$92766.26

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## Schedule "2".

RENTAL OF EQUIPMENT USED BY M. B. MARKLAND Co., CONTRACTOR, IN  
THE CONSTRUCTION OF THE CONVENTION HALL.

2 Stiff Leg Derricks (3/17/28 to 8/23/28) @ \$150.00 each per month for 6 months	\$1800.00	
2 Stiff Leg Derricks (3/17/28 to 8/10/28) @ \$150.00 each per month for 5 months	1500.00	
2 50-ton Guy Derricks (3/17/28 to 8/6/28) @ \$60.00 per week for 21 weeks	2520.00	10
1 25-ton Guy Derrick (3/17/28 to 9/29/28) @ \$50.00 per week for 28 weeks	1400.00	
5 Hoisting engines (3/17/28 to 9/29/28) @ \$35.00 each per week for 28 weeks	4900.00	
2 Penn. Air Compressors (3/17/28 to 9/29/28) @ \$45.00 per week for 28 weeks	2520.00	
1 5-ton Dennis Derrick (3/17/28 to 9/19/28) @ \$5.00 per week for 26 weeks	130.00	20
Miscellaneous tools & equipment valued at \$14,400. and charged off in 2 years \$600.00 per month for 7 months	4200.00	
Total Rentals	\$18970.00	

## RECAPITULATION OF THE ITEMS OF SCHEDULE #2.

1. Tools & Equipment lost or destroyed during continu- ance of work	\$3986.98	30
2. Statement of charges for work, and extra work per- formed by claimant	92766.26	
3. Rental and equipment used by M. B. Markland Co., con- tractor, in the construction of the Convention Hall	18970.00	
Total claimed	\$115723.24	

to which interest is to be added.

**Order to Show Cause.**

IN CHANCERY OF NEW JERSEY.

10	Between UNITED STATES FIDELITY AND GUAR- ANTY COMPANY, a corp., &c., Complainant, and UNITED STEEL CONSTRUCTION COMPANY, a corp., &c., Defendant.	}	On Bill, &c. On Petition of M. B. Markland Co. Order to Show Cause.
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Upon the filing of the petition of M. B. Markland Co.;

20 IT IS on this 16th day of January, 1929, on motion of Cole & Cole, solicitors of said petitioner, ORDERED that Charles F. Seabrook, receiver of defendant, show cause before the Chancellor at Chambers in Atlantic City, on the 5th day of February next at the hour of ten o'clock in the forenoon, why an order should not be made releasing to the petitioner the amount due it from Atlantic City on the 16th day of January, 1929, notwithstanding the notice of claim filed by the receiver

30 with Atlantic City, and that said receiver be required to accept the amount due him, if any, as may be determined to be paid out of the final payment due from Atlantic City to the petitioner, or for such other relief to the petitioner as may be deemed appropriate in the circumstances.

40 IT IS FURTHER ORDERED that a copy of the petition and exhibits and of this order be served upon the receiver, (said copies may be marked as true copies

*Order to Show Cause.*

by solicitations of petitioner), by mailing same to the post office address of the receiver or to his solicitor or solicitors, if known, within five days from the date hereof.

EDWIN ROBERT WALKER,  
C.

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Respectfully advised,  
R. H. INGERSOLL,  
V. C.

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**Affidavit in Answer to Petition and  
Order to Show Cause of M. B. Mark-  
land Co.**

IN CHANCERY OF NEW JERSEY.

10	<p>UNITED STATES FIDELITY &amp; GUARANTY COMPANY, Complainant,</p> <p style="text-align: center;">vs.</p> <p>UNITED STEEL CONSTRUCTION COMPANY, Defendant.</p>	}	<p>Affidavit in Answer to Petition and Order to Show Cause of M. B. Markland Co.</p>
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STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss. :

20 CHARLES F. SEABROOK, being duly sworn accord-  
ing to law on his oath, deposes and says :

I am the receiver of the United Steel Construc-  
tion Company, appointed by the order of the Chan-  
cellor of the State of New Jersey, which order was  
advised by Vice-Chancellor Alonzo Church, in  
Newark, on the 26th day of January, 1928.

30 Answering the allegations of the third paragraph  
of the petition of M. B. Markland Co. filed in this  
cause on January 16th, 1929 wherein it is alleged  
that the United Steel Construction Company de-  
faulted in the performance of its contract, and that  
thereafter I was appointed Receiver, said allega-  
tions are not true; the United Steel Construction  
Company was actively engaged in the performance  
of its contract with the M. B. Markland Co. for the  
erection of the steel frame of the "Convention Hall"

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*Affidavit in Answer to Petition.*

at Atlantic City, New Jersey, from the time it commenced the performance of that contract and it continued to perform, and was actually performing at the time I was appointed its receiver; the order appointing myself as Receiver of the United Steel Construction Company was based on the fact that the business of the United Steel Construction Company had been, and was being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders and not the insolvency of the company; prior to my appointment the United Steel Construction Company had been financed by the Credit Improvement Company, a New York Corporation, by the advances of money from time to time and my organization had been acting as the representative of the Credit Improvement Company, inspecting from time to time the construction work of the United Steel Construction Company; immediately after my appointment I was authorized by an order of the Chancellor, advised by Vice-Chancellor Church, to borrow sufficient moneys from the Credit Improvement Company to continue the work in Atlantic City, and various other jobs;

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Upon my appointment there was no stopping of work on the "Convention Hall", but I continued the performance of the contract until the middle of February, 1928 when the Credit Improvement Company notified me that the M. B. Markland Co. was not making payments in accordance with the terms of the contract between it and the United Steel Construction Company, and that they, the Credit Improvement Company, was not receiving the property proportionate share of the cost of the work as paid for by them; as the result of the said notice of the Credit Improvement Company I notified

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*Affidavit in Answer to Petition.*

M. B. Markland, President of the M. B. Markland Co. that payment would have to be made in accordance with the terms of the contract, and as a result of said notice a meeting was held on the 17th day of February, 1928 in the office of the Credit Improvement Company in New York, which was attended by Mr. Markland, Messrs. Palitz, Livingston and Foster of the Credit Improvement Company, 10 Mr. Hamilton Cross of Insley, Vreeland and Decker, one of my counsel and myself, at that meeting we showed Mr. Markland that payments had not been made in accordance with the contract, and at said meeting I delivered to him a letter, copy of which is annexed hereto, and made Exhibit "A", in which I gave notice that in accordance with Section 10, of the contract M. B. Markland Co. and 20 the United Steel Construction Company we demanded an arbitration under the contract on the question of payment, and named as our arbitrator Mr. George E. Owen, and demanded that the M. B. Markland Company name their arbitrator, within twenty-four hours, in order that the umpire might be selected and the matter be brought to a conclusion; after the said notice was handed to Mr. Markland, he asked that instead of a formal arbitration that I go to Atlantic City with Mr. Palitz of the 30 Credit Improvement Company, the following week and take the matter up with the representative of the architect on the job, and permit him to decide the value of the work finished, and the amount, if any, due; we agreed to the request of Mr. Markland, and on the 21st day of February, 1928 at a conference in Atlantic City, at which were present Mr. Markland, and the resident engineer and representative of the architect, and Mr. Palitz and myself the amount then due to me as receiver of the 40

*Affidavit in Answer to Petition.*

United Steel Construction Company was fixed, and I demanded that the M. B. Markland Company pay said sum named on account of the contract, and stated my willingness to continue with the work and Mr. Palitz agreed that upon said payment being made, the Credit Improvement Company would continue to advance the money to finance the work. The said sum of money fixed at said conference was not paid by the M. B. Markland Company, but in a further attempt at settlement it was agreed that pending definite settlement the M. B. Markland Co. would finance the payroll and negotiations were continued between my counsel and counsel for M. B. Markland Company said negotiations of settlement were not successful and I thereupon on the 12th day of March, 1928 gave to the M. B. Markland Company, a notice, copy of which is hereto annexed and marked Exhibit "B" that petitioner considered the M. B. Markland Company in default under the contract, and would hold it for damages, etc.

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It is true that a claim was filed with me by M. B. Markland Co. as receiver and it is true that I have filed a lien claim with the City of Atlantic City. No notice of dispute of the claim was given for the reason that I was advised by counsel that in all probability upon beginning the suit on the lien claim the M. B. Markland Company, would dispute the claim and that an issue would be framed and the case be sent to a court of law to try the contentions of the parties.

30

CHARLES F. SEABROOK.

Subscribed and sworn to before me }  
 this 31st day of January, 1929. }

CHARLES W. SYMANSKI,  
 Attorney at Law of New Jersey.

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**Schedule "A".**

February 17th, 1928.

M. B. MARKLAND COMPANY,  
Atlantic City, N. J.

Gentlemen :

10 A dispute having arisen as to the amount due to date under Section Eight of the contract entered into between us on the Sixteenth day of April, 1927, we hereby give you notice that we are ready to arbitrate this dispute in accordance with Section Ten of said contract.

20 We name as our arbitrator Mr. George E. Owen and demand that you name your arbitrator within twenty-four hours (24 hrs.) in order that they may select the third arbitrator and, further that no delay be occasioned in the work other than is necessary.

Very truly yours,

UNITED STEEL CONSTRUCTION COMPANY,  
By CHARLES F. SEABROOK,  
Charles F. Seabrook,  
Receiver.

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**Schedule "B".**

To:

M. B. MARKLAND Co.,  
A Corporation of New Jersey.

NOTICE is hereby given to you that by reason of your failure to perform your part of a contract between yourself and the United Steel Company dated the 16th day of April, 1927 and undersigned will hold you for all damages which may arise from said failure and default on your part in the performance of said contract, you having failed (1) to make payments in accordance with the terms of the contract (2) in refusing to arbitrate a dispute that has arisen therein in the manner provided for by said contract; (3) and your failure to abide by the method suggested by you for the settlement of the dispute in the place of arbitration.

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C. F. SEABROOK,  
Receiver, United Steel Construction Co.

March 12, 1928.

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**Contract Between United Steel Construction Co. and M. B. Markland Co.**

THIS AGREEMENT, made this Sixteenth day of April, A. D. 1927, between M. B. MARKLAND Co., a corporation of New Jersey, party of the first part (hereinafter referred to as the contractor, and United Steel Construction Co., a corporation of New Jersey party or parties of the second part (hereinafter referred to as the sub-contractor), whose principal office is hereby declared to be 60 Park Place, Newark, N. J. Witnesseth:

WHEREAS the contractor has entered into an agreement with the City of Atlantic City (hereinafter called the Owner) for the erection of Convention Hall according to certain plans and specifications therein referred to, which said agreement, plans and specifications are to be considered as if hereto attached and made part hereof, the sub-contractor hereby declaring that he has all information concerning the same.

AND WHEREAS, the sub-contractor has agreed to sub-contract with the contractor for a certain portion of the work and materials as hereinafter set forth, with the understanding and agreement that as to so much of said contract as has been thus sub-contracted for, the sub-contractor, for the consideration hereinafter named, is bound, as between himself and the contractor, to stand in the place of the latter and to do everything in, about and concerning the same as is provided by the contractor's contract with the owner, and subject to all its terms and restrictions, to the end that the contractor shall be indemnified and saved harmless from all loss, damage, costs and charges in and about said portion of work and materials.

*Contract.*

NOW THIS AGREEMENT WITNESSETH that for and in consideration of the premises and of the mutual covenants herein contained, the parties hereto, for themselves and their respective executors, administrators, successors and assigns, do covenant and agree as follows :

1. The sub-contractor agrees to supply all equipment, tools, men, coal and any other thing or material necessary to erect all structural steel as supplied by American Bridge Co. under their contract with the party of the first part. 10

2. The sub-contractor agrees to fully and faithfully live up to all of said plans and specifications, including any addenda thereto and including the general conditions therein set forth, in so far as the same relate to the portion of the work which is covered by this contract, and to furnish all labor and material called for hereunder in strict accordance with the plans and specifications and to the satisfaction and approval of the architect in charge of the building. Any work shown on the drawings, though not mentioned in the specifications, or described in the specifications, and not shown on the drawings, is to be executed as part of this contract. The sub-contractor agrees to clear away all dirt and rubbish caused by his operations as often as requested by the contractor ; he also agrees to attend such meetings at the building as may be called by the contractor for the purpose of expediting the progress of the work. No sign or other form of advertisement shall be used by the sub-contractor on or about the building without the written consent of the contractor. 20 30

The sub-contractor agrees to comply with all laws and municipal rules and ordinances, and with the 40

*Contract.*

requirements of any governmental department, wherever the same apply to said building or affect said work; sub-contractor also agrees to give proper authorities all requisite notices relating to the work to be done, and procure and pay for all necessary official licenses or permits.

- 10     3. If at any time during the construction of the work covered by this contract, the sub-contractor, his agents or employees should, either with or without the permission of the contractor, use any tools, appliances, material or machinery which belong to the contractor, or which may be furnished by the contractor, the sub-contractor does hereby assume full responsibility for any injury to persons (including loss of life) or any injury to property which
- 20     may result from or in connection with the use of any such tools, appliances, materials or machinery by the sub-contractor, his agents or employees, whether such damage is due to the negligence of an employee of the contractor, or otherwise. The sub-contractor does hereby agree to indemnify and save harmless the contractor of and from all loss, damage, costs and expense which the contractor may suffer or sustain or be threatened with liability for, arising, either under any workmen's compensation
- 30     law or otherwise, out of the performance of this contract by the sub-contractor, his agents, employees, sub-contractors or material men. The sub-contractor shall carry liability insurance in an amount and in a company or companies satisfactory to the general contractor, indemnifying and saving harmless the contractor and owner of said building against all damages, either under any workmen's compensation law or otherwise, which either of
- 40     them may sustain or be liable for by reason of any

*Contract.*

damage to life, limb or property, growing out of the execution of the work covered by this contract, or any extra work undertaken as herein provided, and shall, at his own expense, defend any suit or action brought against the owner or contractor founded upon the claim of such damage. The sub-contractor agrees to indemnify and save harmless the contractor and the owner of the said building against all the damages which they or either of them may sustain by reason of anything to be supplied hereunder being covered by a patent and not owned by the sub-contractor, and at the expense of the sub-contractor to defend any action brought against the contractor or owner, founded upon the claim that any such thing, or part thereof, infringes any such patent.

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4. The sub-contractor will supply all materials and do all work required hereunder in harmony with the other contractors employed on the building, and with such speed that the contractor and his other sub-contractors shall be enabled, so far as the assistance of this sub-contractor is requisite, to complete the said building within the time stipulated by the contract with the owner. For each day's delay in the completion of the work covered hereby, the contract price shall be reduced by the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which the parties hereto agree shall represent the damage suffered by the contractor through the disarrangement of his organization and plans for the economical prosecution of the work. Any extension of time on account of delay caused by the act, neglect or default of the contractor, owner, architect or any other sub-contractor employed on the job, will not be allowed unless a claim

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*Contract.*

therefor is presented in writing to the contractor within forty-eight hours after the occurrence of the delay. In the event of a dispute as to whether any claim for extension should or should not be allowed, it shall be referred to arbitration, as hereinafter provided. It is further understood and agreed that the contractor is obliged to pay to the owner the

10 sum of One Thousand Dollars (\$1000.00), for each and every day's delay in the completion of the work. For each and every day's delay for which the contractor shall be compelled to pay, which has been wholly or in part caused by the default of this sub-contractor, the sub-contractor will pay to the contractor the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day. Any indebtedness hereunder may be deducted from the contract price.

20 It is further agreed that the contractor shall at all times have the unrestricted right to inspect the material to be furnished by the sub-contractor and his method or plan of performing this contract; if in the opinion of the contractor the sub-contractor shall not have made adequate provisions for the prompt and faithful performance of his contract, or if the sub-contractor shall get behindhand in his portion of the job, so as to prejudice the probability of the said contractor being able to finish at the

30 time required, or if he shall furnish defective materials or do bad work, or if it shall appear that the sub-contractor is not paying when they become due the bills for labor and material furnished to him in the performance of this contract, it shall be lawful for the contractor to cancel the residue of this sub-contract, and to proceed to finish the same by other parties, with the right to retain the damages thereby occasioned him out of any moneys in his hands to

40 the sub-contractor belonging, and to sue for any

*Contract.*

loss which he may not be able thereby to cover; or the contractor, if he so elects, shall have the right to furnish such labor and materials as may be needed at the expense of the sub-contractor. In either event the contractor shall have the right to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all the materials, tools and appliances belonging to the sub-contractor, and for this purpose this Agreement shall be construed as an assignment by the sub-contractor to the contractor of all such materials, tools and appliances. In case of the discontinuance of the employment of the sub-contractor, the sub-contractor shall not be entitled to receive any further payment under this agreement until the entire building shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the contractor in finishing this work, such excess shall be paid by the contractor to the sub-contractor, but, if such expense shall exceed such unpaid balance, the sub-contractor shall and does hereby agree to pay the difference to the contractor. All the rights herein given to the contractor shall be possessed by him in case of the failure of the sub-contractor to faithfully and punctually perform any of the other covenants herein contained, and nothing in this clause shall be construed as limiting the remedies of the contractor to the provisions of this clause, and failure on the part of the contractor to avail himself of the rights under this clause shall not operate as a waiver of any rights obtained under any other part of this agreement. The sub-contractor agrees that two days' notice of any proposed action of the contractor hereunder shall be suffi-

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*Contract.*

10           cient. Such notice may be given by mail addressed to the sub-contractor at his general office or at any branch office he may have in the place where the work under construction is located. Permitting the sub-contractor to work after the time to complete has expired shall not be construed as in any way a waiver of any of the rights of the contractor under this agreement.

20           5. The sub-contractor for himself, his heirs, executors, administrators and assigns, and for all persons furnishing labor or materials to him directly or indirectly, hereby waives all right to any mechanics' claim or lien against the said premises, and agrees not to file any such claim or lien, and further agrees, for himself, his heirs, executors, administrators and assigns, to sign a full, complete and absolute release of all liens, claims or demands whatsoever against said premises for work done or materials furnished therefor under this contract, when so requested by the contractor, his heirs, executors, administrators or assigns; but this shall not be taken to relieve the contractor from personal liability, under this contract to the sub-contractor.

30           6. The contractor may at any time make any changes or alterations in the work covered by this contract which he may deem expedient, whether such changes increase or diminish the work to be done hereunder, but no alteration or change shall be made by the sub-contractor except upon the written order of the contractor. The cost, (except where determined by a schedule of unit prices forming part of this contract) or time to be allowed or deducted shall be agreed upon in writing between the parties hereto. If no additional time or money is  
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*Contract.*

asked for within five days following notice of any proposed change, it shall be construed that there is no additional price or time to be allowed; and in case any proposed change involves a deduction from the contract price herein named, the contractor's estimate of same shall be accepted by the sub-contractor, should he fail to submit his own estimate within five days following notice of such proposed change. If the contractor and the sub-contractor should not be able to agree as to the amount, either in consideration or time, to be allowed or deducted, it shall, nevertheless, be the duty of the sub-contractor, upon written notice from the contractor, to immediately proceed with such alteration or change, and the determination of said amount and time shall be referred to arbitration, as hereinafter provided. It shall be the duty of the sub-contractor to furnish when requested by the contractor an itemized statement showing how he arrives at the amount which he claims should be allowed or deducted. No order of a superintendent of the contractor shall bind contractor either in respect to additions or deductions.

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7. The sub-contractor agrees to furnish to the contractor, within ten days from the date of this contract, a bond, with surety satisfactory to the contractor, and in the standard form in use by the contractor, in the sum of Two hundred ninety thousand Dollars (\$290,000.), conditioned for the faithful performance of this contract. In the event of the sub-contractor's failure to furnish such a bond within said period of time, the contractor may, at his option, either cancel this contract or refuse to make any payment which may become due hereunder until said bond has been furnished.

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*Contract.*

8. For the full and faithful performance of this contract, the contractor will pay to the sub-contractor the sum of two hundred ninety thousand Dollars (\$290,000.), in the following manner: On or about the 20th day of each month 90% of the value of the work done during the previous month and the balance of 10% 30 days after final completion and acceptance by the architects of work called for in this contract. The party of the first part agrees to give and the party of the second part agrees to accept a note payable in three months instead of the cash for final payment of 10%.

It shall be the duty of the sub-contractor to furnish to the contractor, on the first day of each month, a statement showing the work done and materials furnished by him under this contract during the preceding month, and the amount which he claims therefor. This statement must also show the total amount of materials furnished and work done under this contract and payments made on account thereof. The contractor shall have the right to require, as a condition precedent to the making of any payment hereunder, satisfactory evidence of the payment by the sub-contractor of all his indebtedness incurred for material and labor included in any previous monthly statement furnished under this contract. Before making any final payment hereunder, the contractor shall have the right to require from the sub-contractor a full and complete release of all liens for all materials furnished and for all work done under this contract, and an absolute release from claims of any kind that might result from the performance hereof.

*Contract.*

9. It is understood and agreed that the sub-contractor shall not assign or sublet this contract, or any part thereof, or any interest therein, or any right to any of the moneys to become due hereunder, and that he will not hypothecate, pledge or assign any moneys to become due hereunder. Both parties hereby declare that there is no agreement or understanding whatsoever between them affecting the subject-matter of this contract, except as herein expressed. 10

10. In case any dispute as to any matter whatsoever arising under this contract should occur between the parties hereto, it is agreed that such dispute shall be referred to a Board of Arbitration, consisting of three (3) disinterested parties, one nominated by the contractor, one by the sub-contractor, these two to select a third. The decision of any two of this Board shall be final and binding on both parties hereto. Each party hereto shall pay one-half ( $\frac{1}{2}$ ) of the expense of such reference. 20

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written. 30

M. B. MARKLAND Co.  
By M. B. MARKLAND,  
President.

UNITED STEEL CONSTRUCTION Co.  
By O. F. LENEMAN.

Sealed and Delivered in the Presence of  
MAT BORTNY. 40



*Conclusion.*

brook was appointed receiver of said Steel Company; that he proceeded with said work, but later likewise abandoned it.

That Markland finally completed the contract (which the Steel Company had agreed to do) at a cost of more than \$100,000. in excess of the amount it had agreed to pay the Steel Company, and that it is not indebted to the Steel Company in any amount, but, on the contrary, the Steel Company is indebted to it. 10

On or about the 20th day of December, 1928, said Receiver filed a claim with the City of Atlantic City against petitioner in which he claims there is due from it to the Receiver the sum of \$115,723.24.

On the 16th day of January, 1929, there will be due petitioner from Atlantic City under the contract referred to the sum of \$105,000., being the payment certified to be due at that time by the Architects representing Atlantic City. The Comptroller has informed petitioner that no part of said payment will be made because of the lien claim filed by the Receiver. 20

Petitioner has entered into a bond with Atlantic City, and which has been accepted by it in the sum of \$4,532,050 for the faithful performance of its contract for the completion of said Convention Hall. 30

The prayer is, that the Receiver be ordered to withdraw the said lien claim, or be required to look to the final payment due from the City to petitioner for the payment of any sum that may finally be determined to be due the Receiver, or that petitioner be given such other relief as may be agreeable to equity.

The issue is the construction of Clause 5 of the contract between Markland Company and the Steel Company, which reads: 40

*Conclusion.*

10           “5. The sub-contractor for himself, his heirs, executors, administrators and assigns, and for all persons furnishing labor or materials to him, directly or indirectly, hereby waives all right to any mechanics claim or lien against the said premises, and agrees not to file any such claim or lien, and further agrees, for himself, his heirs, executors, administrators and assigns to sign a full, complete and absolute release of all liens, claims or demands whatsoever against said premises for work done or materials furnished therefor under this contract, when so requested by the contractor, his heirs, executors, administrators or assigns; but this shall not be taken to relieve the contractor from personal liability under this contract to the sub-contractor”.

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The Receiver insists that the use of the words waives all right to any mechanics claim or lien against the said premiese is of no effect, because under the Municipal Mechanics Lien Law (Rev. of 1918), 1 Cum. Sup. C. S. 1859, provides for “a lien \* \* \* upon the moneys in the control of said municipality”.

30           It is unnecessary to construe this portion of the clause, as the Steel Company in the remainder of the clause “agrees, for himself, his heirs, executors, administrators and assigns to sign a full, complete and absolute release of all liens, claims or demands whatsoever against said premises for work done or materials furnished therefor under this contract, when so requested by the contractor, his heirs, executors, administrators or assigns; but this shall not be taken to relieve the contractor from personal liability under this contract to the sub-contractor”.

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*Conclusion.*

The only construction which can be placed upon these words is that the Steel Company is bound to sign such release upon the request of the Markland Company, and of course by so doing invalidates the notice heretofore given the city.

If demand is made for the "signing of such release", I will advise an order that said notice be set aside.

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It should be added that this determination does not in any way "release said M. B. Markland Company from personal liability under this contract to the United Steel Construction Company".

Determined : February 27th, 1929.

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**Order.**

## IN CHANCERY OF NEW JERSEY.

10	Between UNITED STATES FIDELITY & GUAR- ANTY COMPANY, a corp., Complainant,  and  UNITED STEEL CONSTRUCTION COMPANY, a corp., Defendant.	}	On Petition of M. B. Markland Co.
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20 It appearing by the petition of M. B. Markland Co. that the receiver for complainant has filed a lien with Atlantic City, pursuant to the Municipal Lien Act, to recover from said fund and in favor of himself for the sum of \$115,723.24, and the said petitioner having claimed that the receiver was without right to file said lien, and the matter coming on to be heard on said petition and answering affidavits in the presence of Maurice Y. Cole, of Cole & Cole, solicitors of petitioner, and William E. Decker, of Insley, Vreeland & Decker, solicitors of the receiver, and the court having read and considered the petition and answering affidavits and having heard and considered the argument of respective counsel, and being of the opinion that the receiver was without right to file said lien because, under and in pursuance of the contract between United Steel Construction Company and said Markland Company, Petitioner, the said Construction Company agreed to sign a full, complete and absolute release of all lien claims and demands whatsoever against said premises for work done and materials furnished therefor under their contract when

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*Order.*

so requested by the contractor, and it appearing that said contractor (petitioner) has requested the receiver to sign a full, complete and absolute release of all liens, claims and demands whatsoever against said premises, and that he has refused and neglected so to do;

IT IS on this 7th day of March, 1929, on motion of Cole & Cole, solicitors of petitioner, 10

ORDERED that the notice filed by said receiver, under and in pursuance of the said Municipal Lien Act be set aside and for nothing holden, and that the lien created by the filing of said notice be and the same is hereby released.

IT IS FURTHER ORDERED that said petitioner have his costs to be taxed, which shall include a counsel fee of One Hundred Dollars. 20

EDWIN ROBERT WALKER,  
C.

Respectfully advised,  
R. H. INGERSOLL.

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NEW JERSEY  
Court of Errors and Appeals

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UNITED STATES FIDELITY AND  
GUARANTY COMPANY,

*Complainant,*

*v.*

UNITED STEEL CONSTRUCTION  
COMPANY,

*Defendant*

} On Appeal  
of Charles  
F. Seabrook,  
Rec'r, &c.

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BRIEF FOR M. B. MARKLAND CO.,  
Respondent

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STATEMENT

The statement in the brief of appellant sufficiently presents the case.

ARGUMENT

**The order under review should be sustained and affirmed.**

Obviously United Steel Construction Company intended to agree that it would not claim a lien against Atlantic City or M. B. Markland Co. Such is the plain spirit of the agreement. Both parties are presumed to

have known the law at the time of the execution and delivery of the agreement. There was no occasion to provide that the building should not be liened; it being a municipal building, the law prohibited the liening thereof. Paragraph or Section 5 of the agreement must therefore be construed to ascertain the intention of the parties. If we omit the word "premises" all ambiguity and difficulty is removed. In addition to agreement that no lien is to be filed, there is the provision that the company will "sign a full complete and absolute release of all liens, claims or demands whatsoever against said premises for work done or materials furnished therefor under this contract when so requested by the contractor, his heirs, executors, administrators or assigns." Nothing is said about any consideration to be paid for such a release or that payment of what is due or claimed to be due must first be made. The concluding words of this paragraph are "this shall not be taken to relieve the contractor from personal liability, under this contract to the sub-contractor." This removes any doubt of the intention to oblige the contractor (appellant) to resort to personal liability of the contractor (respondent) for payment of what is claimed to be due.

Such was the view of Vice Chancellor, and we submit no other rational conclusion could have been reached.

Unless the interpretation which we here contend is sound, then the entire paragraph is meaningless and should not have been inserted. Under all the rules of interpretation the court must give effect to the entire contract, and effect can be given to the 5th paragraph by ascertaining the spirit of the agreement and not laying technical stress upon the word "premises." This substitution of the word "fund" for "premises" makes for clarity.

There are forceful reasons why the general contractor would seek protection against a lien of the fund. This case presents at least one forceful reason. As will be seen by the petition of M. B. Markland Co., there is

nothing due the Receiver but on the contrary, an indebtedness from the Receiver to M. B. Markland Co., because of the default of the Receiver and the Company he represents. Moreover, the effect of the filing of the lien claim was to arrest and deprive M. B. Markland Co. of the use of more than \$115,000 which it needed in the prosecution of the work under its contract.

It appears by the petition of M. B. Markland Co. that he owed the Receiver nothing and that the Receiver owes it more than \$100,000.

The Receiver is an officer of the Court and subject to its orders. He is required to do equity. Independent of whether the interpretation which we contend is correct, we urge that the order was justified as a matter of equity in the light of the verified petition of the respondent. Both the City and the appellant would seem to be amply protected under the facts set forth in the petition.

Respondent contends that upon either phase, the order was a proper one to be made and should be affirmed.

Respectfully submitted,

COLE & COLE,

*Solicitors for Respondent M. B. Markland Co.*

the name of the company, on the  
10th day of March 1880, in  
the County of ... State of ...  
and the name of the company  
is ... which is hereby  
certified to be the name of the  
company as shown on the  
books of the company.

Witness my hand and seal of  
office this 10th day of March  
1880.

Notary Public for the State of ...  
My commission expires the 10th day of ...  
1880.

Attest my hand and seal of  
office this 10th day of March  
1880.

W. H. COLLETT & CO.

Notary Public for the State of ...

Witness my hand and seal of  
office this 10th day of March  
1880.

**New Jersey Court of Errors and Appeals**

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UNITED STATES FIDELITY & GUAR-  
ANTY COMPANY, a Corporation,  
Complainant,

vs.

UNITED STEEL CONSTRUCTION COM-  
PANY, a Corporation,  
Defendant.

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} Appeal of  
Charles F.  
Seabrook,  
Receiver.

**ARGUMENT FOR RECEIVER.**

This appeal brings up for review an order made by the Chancellor (p. 48) wherein it was ordered that the notice of lien claim filed December 20, 1928, by Charles F. Seabrook, the receiver of the United Steel Construction Company, under the "Municipal Lien Act" (P. S. 1918, p. 1041) be set aside and that the lien created by the filing of his notice be released.

Briefly the facts are as follows: M. B. Markland Company having a contract with the City of Atlantic City for the erection of the Convention Hall therein, entered into a sub-contract with the United Steel Construction Company sub-letting to it the erection of the steel frame of that building. Before the completion of the sub-contract Seabrook was appointed receiver for the United Steel Construction Company. He, as receiver, continued the performance of the sub-contract with Markland.

It is Markland's contention that the United Steel Construction Company and Seabrook, as receiver, defaulted in the performance of the sub-contract. It is Seabrook's contention that Markland prevented the performance of the sub-contract.

Seabrook, as receiver, filed a lien claim December 20, 1928, against the funds in the hands of Atlantic City due Markland Company for the amount due to the United Steel Construction Company and himself, as receiver.

A petition was filed by Markland Company after the filing of the lien claim setting forth that the United Steel Construction Company had waived its right to a lien on the funds in the hands of Atlantic City by reason of the following provision in the sub-contract with the Markland Company:

"5. The sub-contractor for himself, his heirs, executors, administrators and assigns, and for all persons furnishing labor or materials to him, directly or indirectly, hereby waives all right to any mechanics claim or lien against the said premises, and agrees not to file any such claim or lien, and further agrees, for himself, his heirs, executors, administrators and assigns to sign a full, complete and absolute release of all liens, claims or demands whatsoever against said premises for work done or materials furnished therefor under this contract, when so requested by the contractor, his heirs, executors, administrators or assigns; but this shall not be taken to relieve the contractor from personal liability under this contract to the sub-contractor" (p. 40, l. 12).

After hearing on this petition the Vice Chancellor made the order above referred to.

The only question in this suit is whether or not by the contract provision aforesaid the United Steel Construction Company waived its lien given to it by statute (P. S. 1918, p. 1041) *against the funds* in the hands of the City of Atlantic City due to The Markland Company arising out of performance of the contract. It is our contention that the contract provision aforesaid did not waive the

right of lien against the fund in the hands of Atlantic City.

The statute permitting a suit to be brought is: "An Act to secure the payment of laborers, mechanics, merchants, traders and persons employed upon or furnishing material toward the performance of any work in cities, towns, townships and other municipalities in this state (Revision of 1918)" (P. S. 1918, p. 1041).

By the terms of that statute (See sections 1-10-13) and the case of *Delafield Construction Company vs. Sayre*, 60 N. J. Law 449, the law is settled that no person furnishing labor or material used in the erection and construction of a building erected for public purposes can have a lien on that building. The lien of the person furnishing labor and materials is confined solely and entirely to the fund of money, if any, remaining in the hands of the municipality after the building has been completed.

Coming to the construction of section 5 of the contract between Markland Company and the United Steel Construction Company, the rule for its construction is this:

"When the alleged waiver rests upon the contract and the terms of the contract are ambiguous on the question, the doubt should be resolved against the waiver, as the parties will not be considered as having waived the right to a lien unless they expressly agree to such terms as are inconsistent with the existence of such a right. 18 *Ruling Case Law*, page 962."

The contract signed by the parties in this case is the contract of the Markland Co. It is a printed form with blank spaces that were filled in. Apparently it was intended for use in the general contracting business where the sub-contractor would

have a right of lien against the premises. It being Markland's contract it should be construed most strongly against Markland.

Only by striking out the word "Premises" in the 5th paragraph of the contract, and writing in its place the words "fund of money in the hands of the municipality" can the result be modified that the complainant has waived its right of lien. To alter or change the contract is not the function of the court. The court must take the contract as it is.

It is the plain intention of the 5th paragraph of the contract to prevent the United Steel Construction Company from asserting a lien against the "premises", and not against the fund.

Inasmuch as we are not asserting any lien against the premises, nor can we under the law assert any lien against the premises this paragraph is of no effect whatever.

INSLEY, VREELAND & DECKER,  
Solicitors of Appellant.

WILLIAM E. DECKER,  
Of Counsel.

