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AMENDED BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

The amended bill of complaint of John L. Thomas, respectfully shows unto your Honor:

1. Complainant is a resident of Baltimore, in the State of Maryland.

2. Complainant is the owner of lands situate in Ventnor City, Atlantic County, New Jersey, particularly described as follows:

> BEGINNING at a point in the easterly line of Washington Avenue seventy-one (71) feet southwardly from the southerly line of Ventnor Avenue and running thence (1) Eastwardly and parallel with Ventnor Avenue, one hundred and twenty-five (125) feet; thence (2) Southwardly in the westerly line of Swarthmore Avenue, forty-three (43) feet; thence (3) Westwardly and parallel with Ventnor Avenue, one hundred and twenty-five (125) feet to the easterly line of Washington Avenue; thence (4) Northwardly, in and along the easterly line of Washington Avenue, forty-three (43) feet to the place of beginning.

Complainant acquired said lands by deed from William S. Thomas, dated May 12, 1922, recorded in the office of the Clerk of Atlantic County, at May's Landing, New Jersey, on July 22, 1922, in Deed Book 687, page 14. Prior to the making of the deed

last mentioned, Joel Mason was the owner of said lands and premises, and title passed through mesne conveyances unto complainant, as above recited.

3. Julian Hillman is the owner of lands situate in Ventnor City, Atlantic County, New Jersey, immediately adjoining the lands described in paragraph two herein, and to the northward thereof; said Julian Hillman's lands are particularly described as follows:

> BEGINNING at a point being the southerly corner of Washington and Ventnor Avenues and running thence (1) Eastwardly, in the southerly line of Ventnor Avenue, one hundred and twenty-five (125) feet; thence (2) Southwardly, in the westerly line of Swarthmore Avenue, seventy-one (71) feet; thence (3) Westwardly and parallel with the southerly line of Ventnor Avenue, one hundred and twenty-five (125) feet to Washington Avenue; thence (4) Northwardly, in the easterly line of Washington Avenue, seventy-one (71) feet to the place of beginning.

Julian Hillman acquired said lands by deed from David Preis, dated June 8, 1923, recorded in the Office of the Clerk of Atlantic County, at May's Landing, on June 15, 1923.

Prior to the making of the deed last mentioned, Joel Mason was the owner of said lands and premises, and title passed through mesne conveyances unto defendant, Julian Hillman, as above recited.

4. Both of the lands described in paragraphs two and three, together with other lands contained within the block of ground, located in Ventnor City, Atlantic County, New Jersey, bounded by Washington, Ventnor, Swarthmore and Atlantic Avenues,

are subject to a scheme of restrictions imposed upon said lands by Joel Mason in the year nineteen hundred and ten.

In February, 1910, Joel Mason plotted said block of ground, together with the block of ground adjoining to the eastward thereof, caused a map to be made thereof by Warner I. Risley, Civil Engineer and Surveyor. Said map was filed in the Office of the Clerk of Atlantic County, at May's Landing, New Jersey, on April 23, 1912, and is there known under No. Map 658E.

It was the intention of the said Joel Mason, owner of said lands, to devote said property to residential purposes exclusively, and for that purpose to create a uniform scheme, by subjecting said lands to uniform covenants and restrictions touching the erection of buildings thereon, and the use to which said lands should not be devoted, and defining the portion of said lands which should not be built upon, but should be kept free for the circulation of air, admission of light, and general beautification of said section.

All of the lots and parcels of ground contained within the block above described, and known on said plan as "107 A," except lots #7, 10 and 15, were conveyed by deeds made by Joel Mason to the several purchasers thereof, and recorded in the Office of the Clerk of Atlantic County, at May's Landing, New Jersey, prior to the date when complainant and defendant, Julian Hillman, acquired title to their respective parts and parcels thereof.

5. The lands of complainant, and of defendant, Julian Hillman, described in paragraphs #2 and 3, were conveyed by Joel Mason to Samuel Jackson on January 3rd, 1911, and recorded in the office of the Clerk of Atlantic County, at May's Landing,

New Jersey, on January 4th, 1911, in Deed Book 449, at page 61.

The lands conveyed in said deed from Mason to Jackson are described as follows:

> BEGINNING at a point being the southerly corner of Washington and Ventnor Avenues and running thence (1) Eastwardly, in the southerly line of Ventnor Avenue, one hundred and twenty-five (125) feet; thence (2) Southwardly, in the westerly line of Swarthmore Avenue, one hundred and thirty (130) feet; thence (3) Westwardly and parallel with the southerly line of Ventnor Avenue, one hundred and twenty-five (125) feet to the easterly side of Washington Avenue; thence (4) Northwardly, in the easterly line of Washington Avenue, one hundred and thirty (130) feet to the place of beginning.

A copy of the restrictions, as imposed by Joel Mason, upon the lands in question and recited in said deed, referred to in the foregoing paragraph, is attached hereto and made a part of this complaint.

6. On or about the first day of August, 1924, or prior thereto, Harold C. Krauskopf and Julian Hillman, began the erection of four block and stucco dwellings on Julian Hillman's property, at the corners of Washington, Ventnor and Swarthmore Avenues, Ventnor City, New Jersey, particularly described in paragraph three hereof.

7. On or about the twentieth day of August, 1924, and before any work had been done upon two garages now erected in the rear of said four dwellings, Joel Mason, the agent in Ventnor City, New Jer-

sey, for complainant, in the presence of Hosea Godfrey and Lewis Eldredge, two lot owners in the block covered by the restrictions hereinbefore recited, notified Harold C. Krauskopf, partner of Julian Hillman, that the lands were restricted, showed, and gave to him, to read, a copy of said restrictions, and told him that it was not permitted that he should build within three feet of the said property line of any lot, and that if he, the said Harold C. Krauskopf, would attempt to violate the said restrictions, application would be made for an injunction to restrain such violation.

8. That thereafter, and about the thirtieth day of August, 1924, said Harold C. Krauskopf and Julian Hillman, disregarding the warning given by complainant's agent, Joel Mason, began and has partially completed the erection of two double garages, one facing on Washington Avenue, in Ventnor City, New Jersey, and one facing on Swarthmore Avenue, in Ventnor City, New Jersey; the southerly line of the one garage is within twenty-two hundredths (.22) feet of the northerly line of complainant's lots and within twenty-two hundredths (.22) feet of the southerly line of Julian Hillman's lots.

Said garages were hastily built by a large force of workmen, and were built and completed within three days from the time work began.

9. The garage facing on Washington Avenue is built within ten and ninety-five hundredths (10.95) feet of the front property line on Washington Avenue. The garage facing on Swarthmore Avenue is built within ten and ninety-seven (10.97) hundredths feet of the front property line of Swarthmore Avenue.

10. Complainant's lots described herein in paragraph two are vacant lots.

11. Complainant has never in any way, by express authority, or by implication, waived any benefit of the restrictions imposed upon said lots.

12. Complainant's attorney, William S. Thomas, was notified by Joel Mason by telephone at the time the actual work was being started on the said garages. Said Joel Mason further reported that he had given due notice of the existence of said restrictions and had warned the said Harold C. Krauskopf, partner of Julian Hillman, that any violation of the restrictions would be restrained by an application for injunction.

13. Complainant caused to be made by Estel D. Rightmire, civil engineer, a survey showing the exact character of the buildings being erected on said Julian Hillman's lands, and immediately upon receipt of the plotting from said surveyor, employed Endicott & Endicott, solicitors, to apply to the Chancellor for an injunction restraining the violation of such restrictions.

The lots owned by Julian Hillman, as shown on the plan of Joel Mason, hereinbefore referred to, are Nos. 25, 26, 27 and 28. All of said lots, as shown on said plan, have their greatest depth at right angles to Ventnor Avenue. Lot No. 25 is at the corner of Washington and Ventnor Avenues. Lot No. 26 is on the east of Lot No. 25, and adjoins it on Ventnor Avenue. Lot No. 27 adjoins Lot No. 26 on Ventnor Avenue, and lies to the east of Lot No. 26. Lot No. 28 is at the corner of Ventnor and Swarthmore Avenues.

13 (a) The garage erected on Lot No. 25 violates said restrictions in manner following: First, it violates the provision that "not more than one building shall be at any time erected on any lot; second, it is erected within three feet of the side line dividing lots Nos. 25 and 26; third, it is erected nearer than twelve feet to Washington Avenue, which is the front property line of said lots so far as said garage is concerned; fourth, it is built within three feet of the side property line dividing Lots Nos. 25 and 23, Lot 23 being part of complainant's lands.

13 (b) The part of the garage erected on Lot No. 26, violates said restrictions in manner following: First, it violates the provision that "not more than one building shall be at any time erected on any lot; second, it is erected nearer than three feet to the side property line dividing Lots Nos. 25 and 26; third, it is erected nearer than three feet to the side property line dividing Lots 26 and 23.

13 (c) The garage erected on Lot No. 27 violates said restrictions in manner following: First, it violates the provision that "not more than one building shall be at any time erected on any lot; second, it is erected nearer than three feet to the side line dividing Lots 27 and 28; third, it is erected nearer than three feet to the side property line dividing Lots Nos. 27 and 24.

13 (d) The garage erected on Lot No. 28 violates said restrictions in manner following: First, it violates the provision that "not more than one building shall be at any time erected on any lot; second, it is nearer than three feet to the side property line dividing Lots Nos. 27 and 28; third, it is built nearer than three feet to the side property line

dividing Lots Nos. 28 and 24; fourth, because part of said garages is built nearer than twelve feet to Swarthmore Avenue, which avenue, so far as said garage is concerned, is the front property line of said lot.

14. The maintenance of said garages, in violation of the restrictions as set forth in the preceding paragraphs, constitutes an irreparable injury to complainant.

Complainant is without adequate remedy in the courts of law, all of which matters are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of complainant in the premises.

In consideration whereof, that the complainant is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said Harold C. Krauskopf and Julian Hillman may, to the best of their knowledge, information and belief, full, true and perfect answers make to all and singular the matters aforesaid.

May it please your Honor, the premises considered, to grant unto your complainant not only the state's writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said Harold C. Krauskopf and Julian Hillman, restraining them and each of them, from committing any further violation of said restrictions, and also commanding them to remove from said premises said parts of said garages as now constitute a violation of said restrictions, but also that the state's writ of subpoena may issue out of and under the

seal of this Honorable Court, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your complainant further prays that he may have such further and general relief as may be proper in the premises.

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

EXHIBIT NO. 1.

UNDER AND SUBJECT nevertheless to the covenants and conditions contained herein, which are hereby made a part of the consideration of this conveyance, and are excepted herein by the party of the second part.; IT BEING EXPRESSLY understood and agreed by and between the parties hereto that the dimensions of the lots herein conveyed shall not be reduced in size. That no building shall at any time be erected nearer than 12 feet of the front property line of any street or Avenue, nor within 3 feet of the side property line of any street or Avenue, on any corner lot, except where a party may own two or more contiguous lots, then *a building* may be erected on any part of the lot or lots, the owner thereof may desire, without regard to intervening line or lines, provided same is not built within 3 feet of outside line of the said lots, nor within 12 feet of the front property line thereof.

Bay windows or porches may extend beyond any of the points hereinabove mentioned. Not more than one building shall be at any time erected on any lot. No building of less value than $3000 shall be erected on any lot. And also SUBJECT to the covenants and restrictions that the top of the first floor joists of any building shall not be more than 8 feet 6 inches higher than the grade of the sidewalk level at property line and that no building erected or to be erected on any lot shall be used for any other purpose than as a dwelling house or boarding house as set forth in these covenants and conditions, also that no privy well or vault be maintained thereon and that any building erected on any lot shall be connected with the sewer system. And ALSO UNDER AND SUBJECT to the covenants and conditions that no building or any part thereof erected upon any lot or lots shall be used or occupied as a coal yard, slaughter house, bone boiling establishment, piggery or other business or purpose than for building, and that no drainage of any kind of filth into the soil shall be permitted, nor shall the said premises be used for any purpose which may create a nuisance. It is also understood and agreed that no business of any kind shall be conducted on any premises or lots, excepting boarding houses. AND ALSO UNDER AND SUBJECT to the following covenants and conditions, it being expressly understood and agreed that the said grantee and her heirs and assigns shall not any time hereafter use, or allow to be used, said premises or any part thereof, to erect or cause to be erected or set up on said premises, any building to be used as a house of prostitution, gambling house, public drinking house, or saloon or other establishment in the nature thereof. It being the object of these covenants and agreements to secure and perpetuate the exclusive-

ness, health, beauty, ornamentation and general improvement of the locality. It is expressly understood and agreed, that the said several covenants on the part of the party of the second part, above specified shall attach to and run with the lands and any subsequent conveyance of the premises herein conveyed shall be made subject to the same restrictions and covenants as herein set forth, which shall be made a part of the said transfer of sale, and so stated in every deed, and it shall be lawful not only for the said party of the first part, their heirs and assigns, but also for the owner or owners of any lot or lots adjoining in the neighborhood of the premises hereby granted, deriving title from or through the said parties of the first part to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate the same, it being understood however that this covenant is not to be enforced personally for damages against the said party of the second part, her heirs or assigns, unless she or they be the owner or owners of the said premises or of some part thereof at the time of a violation of the said covenants or of a threatened or attempted violation thereof, but the said covenant may be proceeded in for any injunction of and for a specific execution thereof, against the said party of the second part her heirs or assigns, and for damages against the party or parties violating the said covenant, or their heirs executors or assigns.

ANSWER TO AMENDED BILL.

IN CHANCERY OF NEW JERSEY.

Between JOHN L. THOMAS, *Complainant,* and JULIAN HILLMAN, *et als.*, *Defendants.*	On Bill. Answer to Amended Bill.

Julian Hillman and Harold Krauskopf, of Atlantic City, New Jersey, answering the amended bill of complaint, say:

1. They admit paragraph 1 of the bill.

2. They admit paragraph 2 of the bill.

3. They admit paragraph 3 of the bill.

4. They deny the statements of facts and conclusions stated in paragraph 4 of the bill except as they are admitted. They admit that Lots 7, 10 and 15 on Plan 107A are not subject to restrictions and they aver that there are other lots on said plan that are not restricted.

5. They admit so much of paragraph 5 as is not denied. They deny that there are restrictions imposed as alleged.

6. They admit the averments in paragraph 6 of the bill except that they aver that the work was begun long prior to August 1, 1924.

7. They deny paragraph 7 of the bill.

8. They deny paragraph 8 of the bill.

9. They deny paragraph 9 of the bill.

10. They admit paragraph 10 of the bill.

11. They deny paragraph 11 of the bill and aver the truth to be that there are numerous violations of the alleged restrictions and that they were consented to by the complainant, and that he stood by and saw violations without objecting.

12. They are without knowledge touching the averments in paragraph 12 of the bill except by the bill, and they pray proof.

13. They are without knowledge touching the averments in paragraph 13 of the bill except by the bill, and they pray proof.

13 (a) They deny the averments in paragraph 13 (a) of the bill.

13 (b) They deny the averments in paragraph 13 (b) of the bill.

13 (c) They deny the averments in paragraph 13 (c) of the bill.

13 (d) They deny the averments in paragraph 13 (d) of the bill.

14. They deny the averments in paragraph 14 of the bill.

COLE & COLE,
Solicitors for Def'ts.

ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

Between JOHN L. THOMAS, *Complainant,* and JULIAN HILLMAN, *et als.*, *Defendants.*	On Bill for Injunction. Order to Show Cause.

Complainant's duly verified bill having been filed, wherein it is alleged that Julian Hillman and Harold C. Krauskopf, partners, are erecting two garages in Ventnor City, between Swarthmore and Washington Avenues, adjoining the property of complainant, which said garages are said to encroach over the area restricted by a scheme of restrictions imposed upon certain lands by Joel Mason, and the Court having duly considered the application,

It is on this twelfth day of September, 1924, on motion of Endicott and Endicott, solicitors for the complainant, ordered that Julian Hillman and Harold C. Krauskopf do show cause before this Court at the Chancery Chambers, Atlantic City, New Jersey, on Tuesday, September 16, 1924, at ten o'clock in the forenoon, why the prayer of the bill should not be granted, and an injunction issued restraining further work on said garages, and directing the removal of such parts of said garages as encroach on the restricted area.

It is further ordered that copies of the bill, affidavits and of this order, which copies may be certified by the solicitors for the complainant, be served upon the defendants, Julian Hillman and Harold C. Krauskopf, within one day from the date hereof.

E. R. WALKER,
C.

Respectfully advised,
E. B. LEAMING,
V. C.

ORDER DISMISSING ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

Between JOHN L. THOMAS, *Complainant,* and JULIAN HILLMAN, *et als.*, *Defendants.*	On Bill for Injunction. On Order to Show Cause. Order Dismissing Order to Show Cause.

This matter coming on to be heard at Chambers on this 16th day of September, 1924, on return of the order to show cause, in the presence of Allen B. Endicott, Jr., of counsel for complainant, and C. L. Cole, of counsel with defendants, and the Court having read and considered the bill and affidavits and answering affidavits, and having heard and considered the argument of respective counsel,

and being of the opinion that a preliminary injunction should be denied and the order to show cause discharged;

It is on said date, on motion of Cole & Cole, solicitors of defendants, ordered that the order to show cause be, and the same is discharged with costs.

On motion of

COLE & COLE,
Solicitors for Defendants.

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

E. R. WALKER,
C.

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

Between
JOHN L. THOMAS,
Complainant,
and
JULIAN HILLMAN, *et als.*,
Defendants

On Bill.
Order of Reference.

The above matter being at issue, it is, on this 31st day of October, A. D. 1924, on motion of Endicott & Endicott, solicitors for the complainant, ordered that the above stated cause be referred to Robert H. Ingersoll, Esquire, one of the Vice-Chancellors of this court, to hear the same for the Chancellor, and to report thereon to him, and to advise what order should be made therein.

E. R. WALKER,
C.

We consent to the making of the above order.

ENDICOTT & ENDICOTT.
COLE & COLE,
Solicitors of Defendants.

A true copy.
THOMAS BARBER,
Clerk.

STIPULATION.

IN CHANCERY OF NEW JERSEY.

Between
JOHN L. THOMAS,
Complainant,
and
JULIAN HILLMAN, *et als.*,
Defendants.

On Bill.
Stipulation.

It is stipulated by and between Endicott and Endicott, solicitors for complainant, and Cole and Cole, solicitors for the defendants, that the testimony of William S. Thomas and John L. Thomas may be taken stenographically in the office of Endicott and Endicott, on Tuesday, January 20th, 1925, at two o'clock in the afternoon, and that a transcript thereof may be used at the final hearing in this cause as and for the testimony of the said William S. Thomas and John L. Thomas.

ENDICOTT & ENDICOTT,
Solicitors of Complainant.
COLE & COLE,
Solicitors of Defendants.

STIPULATION.

IN CHANCERY OF NEW JERSEY.

Between
JOHN L. THOMAS,
Complainant,
and
JULIAN HILLMAN, *et als.*,
Defendants.

On Bill.
Stipulation.

Stipulation made this 21st day of January, A. D. 1925, between Endicott and Endicott, solicitors for complainant, and Cole and Cole, solicitors for defendants:

Whereas, John L. Thomas, the plaintiff in this cause, is now in Florida, and will not be available for the hearing of this cause, now scheduled for February 5th, 1925,

It is stipulated by and between the solicitors for the parties hereto, that if the said John L. Thomas were present he would testify, in effect,

That he is the plaintiff in the said action;

That he has never known of any violations of the restricted covenants imposed upon the tract of land bounded by Washington Avenue, Swarthmore Avenue, Baltimore Avenue, Atlantic Avenue and Ventnor Avenue;

That he has never waived any of his rights to enforce the restricted covenants affecting said lands;

That his brother, William S. Thomas, was his agent, actively in charge of his property, situated within the boundary stated above, and that as such agent he had full charge of all matters pertaining to said lands, and the use thereof, since January 1st, 1924.

We consent to the above stipulation.

ENDICOTT & ENDICOTT,
Solicitors for Complainant.
COLE & COLE,
Solicitors for Defendants.

DEPOSITION.

IN CHANCERY OF NEW JERSEY.

Between
JOHN L. THOMAS,
Complainant,
and
JULIAN HILLMAN, *et als.*,
Defendants.

On Application for Injunction.

Atlantic City, N. J., January 21, 1925.

TESTIMONY

Before C. W. Myrose, Notary Public.

Deposition of William S. Thomas, taken before C. W. Myrose, Notary Public of New Jersey, on January 21st, 1925, in the office of Messrs. Endicott and Endicott, Freeman Building, Atlantic City, N. J., in the presence of John E. Iszard, Esq., appearing for Messrs. Endicott and Endicott, solicitors for complainant, and Clarence L. Cole, Jr., appearing for Messrs. Cole and Cole, solicitors for defendants.

William S. Thomas, sworn.

Direct examination.

By Mr. Iszard:

Q. Mr. Thomas, where do you reside?
A. In Baltimore City, Maryland.
Q. Are you an attorney-at-law of the State of Maryland?
A. Yes, sir.
Q. Are you a brother of John L. Thomas, the complainant in this suit?
A. Yes, sir.
Q. Have you been in actual charge of the property owned by your brother and concerning which this suit is brought, at Ventnor and Swarthmore Avenues, in Ventnor, New Jersey?

A. Yes, sir; the property is on two streets, Washington Avenue and Swarthmore Avenue. The property was originally bought by me, and subsequently I deeded it to my brother, and I have had charge of the property for my brother ever since he owned it.

Q. When was your attention first called to the fact that there were violations of restrictions being made down there affecting your brother's property?

A. Some time last August. Joel Mason, a real estate agent in Ventnor City, and who has charge of this property of my brother's for sale, telephoned me at Baltimore that Mr. Hillman, who owns the Ventnor front of the property between Washington and Swarthmore Avenues, was improving the same, and that in improving it he was building two garages, one facing Washington Avenue and one facing Swarthmore Avenue, and that in his, Mason's judgment, the building restrictions with regard to the distance they should be from the side lines and the front of the streets was not being complied with but was being infringed. He stated that he had notified Mr. Hillman's partner—I don't recollect what his name was—that the footings indicated that the building restrictions weren't being complied with, and asked me what my brother's attitude was about. I told him he wanted the building restrictions complied with and asked him whether he had had it surveyed to find out that he was correct in his view of the case, and he said he had not. I then informed him to have it surveyed to find out whether the restrictions were being violated, and to notify Mr. Hillman that my brother wanted the restrictions complied with, which Mason said he had already done.

Q. Was the partner's name Harold Krauskopf?

A. Yes.

Q. Had Mr. Joel Mason been employed by you to look after these properties for you?

A. Yes. Not only these properties, but a great many other properties that I own in Atlantic City, myself and my brother.

Q. Did you order him to employ Estel D. Rightmire to make this survey, or did you leave the selection of the surveyor to Mr. Mason?

A. I told Mr. Mason to employ a surveyor and he employed a surveyor, and when I came down here—I was down here, I think, at the Traymore Hotel, and Mason telephoned me that Mr. Rightmire had surveyed the property. It took him quite a little while to do it. It seems he is a very busy gentleman. Then, according to the survey, it showed, in my judgment, that the property was infringed. I showed it to my brother, who was at the Traymore at the time, and we came around to Mr. Endicott's office and asked him to institute an injunction suit.

Q. What time was that?

A. It was in September. I don't remember. The early part of September sometime.

Q. Mr. Thomas, had you ever known of any other violations down there affecting your property prior to these violations?

A. No, I don't think there was any one ever violated any of the restrictions on any of the lots while I owned them or my brother owned them. There may have been garages built there, but they were built on lots not contiguous to either his or mine. I didn't go down to the property, of course, constantly. I lived in Baltimore. There may have been violations which I didn't know of, but at the present time I don't know of any. Mason never reported any violations. This is the only thing he

reported, and he was going around there all the time.

Q. Did your brother ever have actual and active charge of the property himself?

A. My brother left the management of this property entirely to me.

Q. And everything that was done or that was to be done in regard to this property, it was your duty to do?

A. Yes, sir.

Cross-examination.

By Mr. Cole:

Q. Did your brother specifically authorize you to institute this Chancery suit?

A. Yes, sir. He instituted it himself.

Q. Did you or your brother, so far as you know, ever have any talk about this matter with Mr. Hillman or his partner, Mr. Krauskopf?

A. I didn't, and I know my brother didn't.

Q. So far as you know, any notification that the defendants had was through Mr. Mason; is that true?

A. Yes.

Q. And, of course, you don't know what actually took place between them?

A. No.

Q. After you received advice from Mr. Mason that the defendants were violating the restrictions, did you then, or your brother, so far as you know, notice Mr. Hillman or his partner in any way?

A. Notice notifying ——

Q. Notify him in any way that he must cease?

A. I told Mason over the phone the same day that he telephoned me to notify Mr. Hillman that the

building restrictions would be enforced and he said that he had done that, and I then told him on account of the uncertainty as to whether Mason was correct in diagnosing this situation, to employ Mr. Rightmire to have the survey made and see whether Mr. Hillman actually was over the line.

Q. But do you know whether or not Mr. Mason communicated your attitude and your brother's attitude to the defendants?

A. Only through what Mr. Mason told me.

Q. Do you know that it has always been the contention of the defendants when in conversation with Mr. Mason that they had a right to do what they were doing on the premises in question and that they were not violating the restrictive covenant?

A. I only gather that from the affidavit which Mr. Hillman filed in the case, and their answer.

Q. And are you prepared to say that the restrictions in question have not been violated by other property owners?

A. No, sir, I could not. I don't know. It would require a survey, and I am not sufficiently familiar. To the best of my knowledge I will say, however, that those restrictions were never violated while I or my brother owned that property.

Q. But that could have happened without your knowledge, could it not, Mr. Thomas?

A. It may have, yes, sir.

Q. In the answering affidavit in this case Mr. Krauskopf testified Mr. Mason told him that he, Mason, would advise him the attitude of Mr. Thomas upon informing said Thomas of the alleged violations. In this affidavit Mr. Krauskopf also states that no further word was heard from Mr. Mason upon this subject and after August sixth, 1924, when originally notified by Mason that the

restrictions were being violated. Do you have any knowledge of why such notifications was not given the defendants by Mr. Mason, if it wasn't given?

A. No, sir.

Q. Do you own any property yourself affected by these restrictions?

A. No, sir.

Q. Do you know that at the time suit was instituted the garages in question were enclosed and practically completed, and all that remained to be done was the placing of the flooring and outside stucco and ornaments?

A. I saw the garages the day before the suit was instituted. It seemed to me there was a good deal of work to be done on them. Exactly how much I don't know. The only thing I noticed that was complete about it was the walls and possibly the roof was on it, but there were no doors on the garage and no stucco. Cement blocks, I think they were; I am not certain of that. Cinder blocks, wasn't it? However, I am not certain what that garage was built of, but it seems to me it was cinder blocks.

Q. But don't you think it was substantially completed at the time this suit was brought?

A. No, I can't say—I don't think it would cost very much to move it. The construction isn't expensive, if I am correct about it being cinder blocks.

Q. Did you see the property on or about August twentieth, 1924?

A. No, sir.

Q. So that you don't know, of course, how far the work had progressed at that time?

A. No, sir.

Q. How soon did you take action upon being notified by Mr. Mason that the restrictions were being violated?

A. Immediately. I notified Mason to have an en-

gineer to survey and I came down to Atlantic City the latter part of August and hunted Mason up, asked him about the survey, and got after Mr. Rightmire, who, it seems, is a very busy man, and as soon as I received the survey from Mason, the same day I employed Mr. Endicott, and I think it was the next day that the injunction was gotten out. I know the bill was prepared right away.

Q. And in point of time, how long was that, if you recall, after your conversation with Mr. Mason?

A. Well, I really couldn't say, time flies so, but if Mason is correct in stating that he telephoned me August twentieth, it wasn't until about the sixth of September, I believe, that we got Mr. Rightmire's survey.

Q. So that considerable time elapsed between your talk with Mr. Mason and the survey?

A. Just about that much time.

Q. And in the meanwhile, I assume, you did not have very substantial justification for charging that the restrictions were being violated until you had this survey?

A. Exactly. That was the only reason for the delay. I didn't want to make a charge against Mr. Hillman unless it was correct, and a survey was the only way to disclose that.

Q. And by that time the building was practically done, wasn't it?

A. Well, as I said before, I don't think the building was practically done. Besides, I don't think Mr. Hillman ought to have gone on in view of the notice he had received and completed the building unless he was certain that his building was properly located.

Q. However, you don't know except by hearsay whether or not he ever received any notice, do you, Mr. Thomas?

A. No, sir, I do not, and his affidavit here filed in the case, which admits a notice, for whatever it is worth.

I hereby certify that the foregoing is a true and correct transcript of the proceedings in the before-entitled cause.

C. W. MYROSE,
Notary Public of New Jersey.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
JOHN L. THOMAS,
Complainant,
and
JULIAN HILLMAN, *et als.,*
Defendants.

On Bill, etc.
Final Hearing.

Atlantic City, N. J., May thirteenth, 1925.

TESTIMONY

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

APPEARANCES:
For complainant, ALLEN B. ENDICOTT, ESQ., of ENDICOTT & ENDICOTT.
For defendants, HON. C. L. COLE, of COLE & COLE.

Mr. Endicott: I desire to file a stipulation providing for the taking of testimony, and a further stipulation dated January twenty-eighth, 1925.

The Court: You may do so.

(Mr. Endicott read the deposition of William S. Thomas.)

JOEL MASON, sworn for complainant.

Direct examination.

By Mr. Endicott:

Q. Where do you reside?
A. Margate City.
Q. Did you ever own any property in Ventnor City between Washington and Swarthmore Avenues?
A. I owned it all at one time.
Q. When?
A. That is about fifteen years ago, I guess.
Q. Did you ever cause a map to be made of the property between Atlantic Avenue, Washington, Ventnor and Baltimore Avenues?
A. Yes, sir.
Q. I show you a copy of a map entitled "Copy of map of lots situate in Ventnor City, N. J., belonging to Joel Mason, February, 1910," and ask you if that is a copy of the map which you had made showing that property?
A. That is a copy of it.
Q. Did you arrange a scheme of restrictions affecting that property or designed to affect that property for its improvement—to secure and perpetuate the exclusiveness, health, beauty, ornamentation and general improvement of the locality?
A. Yes, sir.

Mr. Endicott: The restrictions are admitted in the pleadings.

Q. Did you convey lots in that district, in the deeds of which those restrictions were contained?
A. Yes, sir.

Q. Were any of the lots conveyed by deeds which did not include the restrictions?

A. Well, I didn't know that until about a year or so ago they told me there was some trouble and there were some deeds that had been deeded without the restrictions in. The scheme I had was the deeds printed, all the deeds had the restrictions in.

Mr. Cole: I object. He has answered it.

The Court: Yes; strike the latter part.

Q. Are you the agent for John L. and William Thomas of Baltimore?

A. Yes, sir.

Q. Are you acquainted with their property which is a part of the property shown on the map which you have just identified?

A. Yes, sir.

(Map offered in evidence and marked Exhibit C1.)

Q. Did you have a conversation with Mr. William Thomas respecting his property in August of 1924?

A. Yes, sir.

Q. Can you fix the date of that conversation?

A. I cannot.

Q. Can you fix the date with relation to any changes that may have taken place on the lot of Mr. Julian Hillman adjoining about that time?

A. I can't recall the time. Somewheres the latter part of July or first of August. Somewheres around there.

Q. Well, had anything been done to Mr. Hillman's lot at that time?

A. Yes. They had erected four houses on the front facing Ventnor Avenue. They were working at them.

Q. Was anything ever done on the rear of these lots?

A. Well, later there they drawed a line across from the surveyor's mark clean out to the rear line across the lots from street to street, and Mr. Eldredge and Mr. Godfrey, which has a building on the third lot from there, said they were coming right out to the line, and I notified them that they couldn't go within three feet of the line, so I took a copy of the restrictions down to the gentleman and told him that he was violating the restrictions and there was a copy of them, and if he went on and done any work on that line he would taken in court, and I said he would be fought from court to court with it and it wouldn't pay him to do it, and I said, "You haven't spent a dollar and if I was you I wouldn't do it." I took Mr. Godfrey and Mr. Eldredge down with me and he hadn't spent a dollar then putting the things in, more than drawing a line on the rear of the lots.

Q. Did you report that conversation to Mr. Thomas?

A. Yes, sir.

Q. Did you receive any instructions from him with respect to it?

A. Yes, sir; he told me to get an engineer and have ——

Q. No. Just whether you did. Pursuant to his instructions, did you do anything about the condition you found on the Hillman lot?

A. Well, I only ordered the engineer to go there and survey it.

Q. Whom did you order to make a survey?

A. Mr. Rightmire.

Q. When did you give him the order to do the work?

A. Right away, after I notified the people they were coming out to the line. About, I suppose, a week or so after that. He went down there and they hadn't done anything out to the line and he said he couldn't make a survey until they did do it, showing it, so the thing laid there then for some days, I don't know how long a period of time—I guess for over a week, anyhow—and nothing was done, and then a few days afterwards they put in a big gang on there and they rushed the garages up in about two days.

Q. I understand that before any work had been done at all in the erection of those garages the surveyor had called at the lots in order to make the survey which you had ordered?

A. Yes.

Q. Did you have any further conversations with Mr. Rightmire about doing the work?

A. No. He just made the plan and sent it in.

Q. Were you present with him when he made a survey?

A. No.

Q. Did you receive the survey from him?

A. Yes.

Q. How long after the work had begun on the garages did you receive the survey?

A. I couldn't recall that.

Q. What did you do when you received the survey?

A. Well, I sent it to Mr. Thomas and he took care of it then.

Q. Do you know where you sent it to him?

A. I think to Baltimore.

Q. Did you have any further conversations with Mr. Hillman or Mr. Krauskopf with relation to this work?

A. I don't think so.

Q. Do you know who it was that you talked to when you showed the set of restrictions that you speak about?

A. The gentleman sitting there at the end of the table.

Q. Do you know who that gentleman is?

A. Mr. Krauskopf, isn't it?

Q. Do you know of any violations of the restriction scheme which you imposed on this property in the immediate neighborhood of Mr. John L. Thomas' property?

A. Well, not there, not as I know of, no. Well, I might say this: that in the restrictions that I had on there it said one building on a lot. At that time, when I had those restrictions on there, there wasn't any automobiles in Ventnor, and now they are building garages, which is two buildings on a lot. I suppose that is a violation of the restrictions.

Cross-examination.

By Mr. Cole:

Q. Were Ventnor Avenue, Atlantic Avenue, Baltimore Avenue, Swarthmore Avenue and Washington Avenue dedicated and opened city streets at the time you bought?

A. No. I cut Swarthmore Avenue through there.

Q. So that what you did was to own a block of land bounded by Ventnor, Baltimore, Atlantic and Washington Avenues?

A. That is it.

Q. You cut Swarthmore through?

A. I cut Swarthmore through.

Q. And you named one section 107a and another 107B?

A. Yes.

Q. Did you attempt to insert the same restrictions in the deeds covering 107B as 107A?

A. Yes, they are supposed to be all the same.

Q. Your map faces the lots on Ventnor Avenue on Ventnor Avenue, and the Atlantic Avenue lots on Atlantic Avenue?

A. Yes.

Q. Do you regard that as the front of the lots?

A. That is the front, where they face.

Q. And the lots that do not face on Atlantic or Ventnor Avenue, you deem the front to be either Baltimore, Swarthmore or Washington, as the case might be?

A. Yes.

Q. And the buildings are accordingly built, are they not?

A. Yes, sir.

Q. Ventnor Avenue, by the way, runs lengthwise of the beach, does it not?

A. Yes, sir.

Q. As does Atlantic Avenue?

A. Yes, sir.

Q. Baltimore, Swarthmore and Washington are at right angles from ocean to thoroughfare?

A. Yes, sir.

Q. Ventnor Avenue and Atlantic Avenue are the long avenues?

A. Yes, sir.

Q. How many garages are there presently existing in the two blocks, 107A and 107B?

A. I couldn't recall. There are several of them.

Q. How many do you mean by several?

A. Oh, I suppose there is ten or fifteen garages in there.

Q. In addition to the buildings?

A. In addition to the buildings.

Q. When did they begin to erect garages? How early?

A. Well, I guess some six or seven years ago.

Q. How many garages existed at the time Mr. Hillman began to erect his?

A. Well, I couldn't tell now.

Q. Half a dozen?

A. Yes; there was that many or more.

Q. Are you still the owner of any lots in the blocks?

A. No.

Q. When did you part last with your interest?

A. That has been—I can't tell that, but that has been seven or eight years ago.

Q. Did you have any land remaining in either of these two blocks at the time some of these garages began to go up?

A. Well, I think I did.

Q. Did you make any attempt to stop the building of them?

A. No.

Q. Why not?

A. Well, I didn't think it was necessary.

Q. Did you regard it as a violation?

A. Well, as I say, the restrictions called for one building on a lot, and I meant that not to build a double house there, but I think the two buildings would be a violation of the restrictions.

Q. Did you build any garages yourself on any lots?

A. Yes, sir.

Q. Which lot did you build a garage on?

A. I built one for Mr. Godfrey, was the only one I built. Last summer.

Q. Last summer?

A. Yes, sir.

Q. Put a garage on that?
A. Yes, sir.

By the Court:

Q. You mean as a contractor you built a garage?
A. As a contractor.
Q. Not as owner of the land?
A. No. I just had a contract with Mr. Godfrey.

By Mr. Cole:

Q. Did you ever, as owner, build a building on any of these lots?
A. Yes.
Q. Any garages on any of these lots?
A. No, not that I built.
Q. Now, do you know of your own personal knowledge in how many instances the restrictive covenants were omitted from deeds you made?
A. I couldn't tell you.
Q. When you were in communication with Mr. Thomas concerning the violations, you were dealing only with the matter of distance, weren't you, from lines?
A. As I say, I was building Mr. Godfrey's garage at that time, and house, and they wanted to know if they could go back to the line and I told them they couldn't. Then they called my attention to these people going right out to the line with a straight wall from street to street, and that is when I notified them to stop, they hadn't spent any money there, and to stop before they did.
Q. I say, you were warning them simply against the matter of distance?
A. Yes, sir.

Q. That they weren't keeping these garages back the proper distance?

A. Three feet from the line.

Q. That was the limitation of your admonition, wasn't it?

A. Yes, sir, that was all.

Q. Do you know of your own knowledge whether a copy of this map was filed at May's landing?

A. I don't know. I don't know whether it was or not. You see, the property was deeded to me with no restrictions in it and I went and had these printed with the restrictions in, and then my intention was to deed every lot with restrictions in the deed.

Re-direct examination.

By Mr. Endicott:

Q. Is it not true that some of the garages which are built on this tract are built on additional lots and are not on the same lots as the houses which they serve?

A. Yes, there is some that is on single lots by themselves.

Q. Can you recall any particular instances of that kind?

A. Well, back of Mr. Peters' house on Swarthmore Avenue there is a garage there on a single lot, I know.

Q. What proportion of the garages which have been erected on this tract are erected on separate lots or additional lots to the houses which they serve?

A. Well, I don't know how many there is there.

Q. More than one?

A. I couldn't say that. I know of one, anyhow.

HOSEA GODFREY, sworn for complainant.

Direct examination.

By Mr. Endicott:

Q. Where do you live, Mr. Godfrey?

A. Ventnor City.

Q. What street address?

A. Washington Avenue. 11 South Washington Avenue.

Q. Is that on the west side of Washington Avenue?

A. No; it is on the east side.

Q. Do you know Mr. Harold Krauskopf?

A. Why, I met the gentleman when he was building these houses in this location.

Q. You mean the houses on ——

A. Washington Avenue and Ventnor Avenue.

Q. How far is your house from the house which he is building or has built? How many lots away?

A. There is two forty-three foot lots between my line and their line. That would be eighty-six feet. I don't think the original map shows them as forty-three feet. I think when they widened Ventnor Avenue they also widened some of these other lots.

Q. Some time in July or August of 1924, did you have a conversation with Mr. Harold Krauskopf relating to the erestion of a garage on the rear of his or Mr. Hillman's lot?

A. Mr. Mason did most of the talking, but I was there at the time.

Q. Did you hear all of the conversation?

A. Practically all of it, I think.

Q. Will you relate as nearly as you can what took place?

A. Well, we saw this line drawn from Swarthmore Avenue to Washington Avenue.

Q. By the way, when you say a line, will you just tell us how that was marked or what was used to mark it?

A. It was just what we would call a chalk line. Just a cord a little larger than a fishing line.

Q. All right.

A. Of course, I, being interested, told Mr. Mason about the thing. As a matter of fact, I thought they were building over their line at first, that was the reason I called Mr. Mason's attention to it, and, building there myself, I had been notified by one of the owners of property in that tract to keep three feet away from the line. I told Mr. Mason, I said, I had to keep three feet away from the line and the other people were coming right out to the line, so Mr. Mason, being the agent for Mr. Thomas, who had the lots right next to it, notified Mr. Krauskopf and Mr. Eberhart, the gentleman sitting over here— he is the architect—in my presence and Mr. Eldredge's presence, and he told them just what Mr. Mason said, that they were violating the restriction and he would advise them not to go ahead on the thing, and he handed them a copy of a restriction.

Q. Did he say to them whether anything would be done if they did violate the restrictions?

A. Yes; he told them that Mr. Thomas would take the thing up. I might say that I bought my lot from Mr. Thomas, too, and Mr. Thomas' brother, William Thomas, was at the title company on the day of settlement, and I had talked about buying the lot on the other side of the street, which was only thirty-five feet wide, and I said to him the reason I didn't buy that was because Mr. Peters had told me I couldn't build out to the line, and he said, "That is quite correct." He said, "You shouldn't build out to

the line." He told me that in the title company, and then I bought this lot from Mr. Thomas on account of it being a wider width, so I could get what I wanted and keep three feet away from the line.

Q. Did you build your garage three feet away from the line?

A. Yes.

Q. And that is on a lot that is eighty-three feet away from the Julian Hillman-Krauskopf property?

A. Yes; eighty-six feet.

Q. Did you see any surveyor's marks in connection with the line which called your attention to the Hillman operation?

A. Well, I knew about the size of these lots. Mr. Thomas had told me that he had two forty-three foot lots and one forty-four foot lot. It seems as though when Ventnor Avenue was widened out they took off the front of these lots that Mr. Hillman and Mr. Krauskopf have, and then he took ten feet off of the side lots to deepen those lots on Ventnor Avenue, and when I first saw this line I thought they were building over on Mr. Thomas' line. Instead of that, they had seventy-one feet and they was coming right out to the line instead of over the line.

Q. Did you ever have any subsequent conversations with anybody connected with the Hillman operation on this subject?

A. No, I don't recall having any conversation on this subject.

Q. Did you own your lot which was eighty-six feet away from the Hillman property at the time of these conversations with Mr. Krauskopf?

A. Mrs. Godfrey owns them, my wife. We were just building there at the time. Our house wasn't finished at that time. We weren't living in it. We moved the fourteenth of August.

Cross-examination.

By Mr. Cole:

Q. Do you know the number of your lot on the map?

A. No, sir, Judge, I do not.

Q. Can you tell its location by looking at the map and if so, make a cross?

A. Yes.

Q. Make a cross where you say your lot is.

The Court: He had better make a nought. There are other crosses there.

A. I have a thirty-five foot lot and eight feet more than this calls for. I have that and eight foot off of this one.

Q. In other words, you put your nought at lot 17 and you say you have part of lot 19?

A. Yes, sir, according to this map. Those restrictions call for not less than thirty-five foot lot, and when they widened Ventnor Avenue ——

Q. When did you build?

A. Last spring and summer.

Q. And you built a garage on your lot?

A. Yes.

Q. Did Mr. Thomas know that you were building a garage there?

A. Well, he didn't have first-hand knowledge of it. He wasn't here at the time that I was building.

Q. You bought from him?

A. I bought from him.

Q. Has he taken any steps to make you remove your garage?

A. No.

Q. Your garage was built before Mr. Hillman began to build his?

A. Yes.

Q. How do you come to have a forty-three foot lot?

A. Well, as I understand it, when they widened Ventnor Avenue that took off of the Ventnor Avenue lots, and then they took off of these side lots, that is, on Washington Avenue and Swarthmore Avenue. They took ten feet off of there, and that left four thirty-five foot lots and one twenty-five foot lot, one twenty-four foot lot. They took eleven feet off. Then they re-mapped it and made three forty-three feet lots on Swarthmore Avenue and three forty-three feet lots on Washington Avenue.

Q. Immediately in the rear of the Ventnor Avenue lots?

A. Yes.

Q. So that Mr. Thomas now has a forty-three foot lot?

A. He has a forty-three foot lot on Washington Avenue adjoining the Hillman operation, and three lots on Swarthmore Avenue adjoining it.

Q. All forty-three feet?

A. All forty-three feet.

Q. Is there any building on any one of his lots?

A. No.

Q. Are there buildings on the Atlantic Avenue side of these lots, in these two blocks?

A. Yes.

Q. Where do they face?

A. They face Atlantic Avenue.

Q. Are there any buildings on Ventnor Avenue between Swarthmore and Baltimore?

A. Yes.

Q. Where do they face?

A. Well, there is one at the corner of Swarthmore

and Ventnor Avenue. That faces Ventnor Avenue; has a sun parlor on Swarthmore, but the stops are on Ventnor Avenue. The other corner is vacant.

Q. Does that cover two lots?

A. No; I think that covers one lot.

Q. How long has that been there?

A. Well, I don't know definitely. It has been built within the last two years, I would say.

Q. Before Hillman built?

A. Yes.

Q. And these buildings which face Atlantic Avenue were built before Hillman's were built?

A. I think they have been there a good many years. I don't know when they were built. Built when I went down there.

Q. Do you know roughly how many garages there are within these two tracts, 107A and 107B?

A. No, I do not. There isn't a great many there. Some of the garages are under the houses.

Q. Did you read your restriction before you built the garage?

A. No. I didn't know that there was any restrictions about it on the garage. Mr. Peters was the one that told me, said I had to keep three feet away from the line, and I didn't know anything about two buildings on one lot until after this thing came up.

Re-direct examination.

By Mr. Endicott:

Q. Do you know why you talked with Mr. Peters about the restrictions?

A. Yes.

Q. Why?

A. Well, there was a lot thirty-five feet over right back of—almost back of Mr. Peters' house and I

was in the market for a lot and I called him up to ask him what kind of neighbors would be next door to me towards Ventnor Avenue if I bought that lot.

Q. Well, never mind. That isn't what I thought you had in mind. That is all.

LEWIS S. ELDREDGE, sworn for complainant.

Direct examination.

By Mr. Endicott:

Q. Where do you live, Mr. Eldredge?

A. Ventnor City.

Q. Did you own a property on the east side of Washington Avenue in the fall of 1924?

A. Yes, sir.

Q. Can you locate the distance of your property from the property of Julian Hillman at the corner of Washington and Ventnor Avenues?

A. Forty-three feet.

Q. Did you adjoin the property of John Thomas on Washington Avenue?

A. Yes, sir.

Q. And Thomas' property separated your property from the Hillman property?

A. That is right.

Q. Did you build a garage on your property?

A. Yes, sir.

Q. Did you build it on the line or did you keep back from the line?

A. Kept back three feet from the line.

Q. From the back and side?

A. Both ways. On the back and side, both.

Q. Were you present at a conversation between Mr. Mason, Mr. Godfrey, Mr. Krauskopf and Mr. Eberhart ——

A. Yes.

Q. ——In the summer of 1924?

A. Yes.

Q. Will you tell us what took place?

A. The Hillman-Krauskopf operation had drawn a line from Swarthmore to Washington Avenues, showing, we thought, where they were going to build these garages, and they were over to the line. Instead of keeping back three feet, they were all the way over on the line. Mr. Godfrey notified Mr. Mason to that effect. Mr. Mason told Mr. Krauskopf that if he went ahead with it he would notify Mr. Thomas and there would be a law suit in reference to it and that he had better not go ahead with the operation.

Q. Had any work been done in the erection of the garages on the rear of the Hillman property at that time?

A. No, only this line drawn.

Q. Can you fix the date of that conversation?

A. Not the exact date. It was somewheres around the last part of July or the first part of August.

Cross-examination.

By Mr. Cole:

Q. From whom did you buy?

A. Mr. Thomas.

Q. When?

A. It was, I think, in June. I think it was June I bought the lot from Thomas.

Q. What year?

A. 1924.

Q. And did you proceed to build immediately?

A. Yes, sir.

Q. Did he know you were building a garage there?

A. No.

Q. Did you ever see him after you bought the property from him?

A. Yes, sir.

Q. Was he down there?

A. Yes, sir.

Q. When?

A. During the summer, while I was building the operation, while I was building the house.

Q. He saw the garage going up then, didn't he?

A. I don't know that he did. I don't know whether he did or not.

Q. Well, he was there?

A. I know, but he didn't go around and look at the garage. He may have seen it. I couldn't tell you whether he saw it or not.

Q. What part of the property was he on?

A. He went in the house; looked at the house; that is all.

Q. The house you were building?

A. Yes.

Q. At that time was the garage under construction?

A. Yes.

Q. And you say he owns lot 23 on this map which intervenes between you and the Hillman property; is that correct? In other words, you own 21?

A. Yes.

Q. What is the size of your lot?

A. Forty-three by sixty-two and a half.

Q. How did you find out that there were restrictions on the lots?

A. I got a copy of the restrictions when I bought the property.

Q. Did you read them?
A. I did, yes, sir.
Q. From whom did you get the copy?
A. The title company.
Q. Did Mr. Thomas say anything to you about restrictions on the lot?
A. Not when I bought the property, no, sir.
Q. When you got the deed, didn't you see the restrictions in the deed?
A. No, sir, they are not in the deed. The restrictions aren't in the deed.
Q. How did you come to be advised about them?
A. When I buy a property I always find out or try to find out if there is any restrictions on the property.
Q. Then you knew of the restrictions before you took title?
A. Well, yes.
Q. And you read them?
A. I did.
Q. Did you read there was only to be one building on a lot?
A. Yes.
Q. Why did you put a garage on?
A. Well, I wanted a garage and I put it on. There were some other garages on properties in that section, so I did the same.
Q. You thought you could do it?
A. Yes.
Q. Having seen the garages there, you thought that wasn't a violation, didn't you?
A. I knew it was a violation according to the restrictions, and I went against the violation.
Q. Why did you do that?
A. Just like I say, because there were other garages and I did the same thing.

Q. You were very careful not to violate the three foot restriction?

A. Yes, sir.

Q. Why were you so careful about that and so indifferent about building the garage?

A. Well, I thought I would be on the safe side by building within three feet, because the restrictions claimed that they shouldn't build within three feet of the line, so I kept back three feet.

ESTEL D. RIGHTMIRE, sworn for complainant.

Direct examination.

By Mr. Endicott:

Q. Are you a civil engineer and surveyor?

A. Yes, sir.

Q. Have been such for how long?

A. About thirty-five years. We will say thirty, anyway, to make it safe.

Q. Did you make a survey of the property of Julian Hillman at Washington, Ventnor and Swarthmore Avenues in Ventnor City in 1924?

A. I made a survey of the property at the southeast corner of Washington and Ventnor, I didn't know whose property it was.

Q. Did you make a plan of that survey?

A. Yes, sir.

Q. Is the sheet which I show you the plan which you made?

A. Yes, sir.

Q. Can you tell us when you made that plan?

A. August thirtieth, 1924.

(Plan offered in evidence and marked Exhibit C2.)

Q. Do you know when you delivered that plan to anybody?

A. I am not sure of the date. It was some time after the survey was made. Just how soon I am not sure.

Q. Did you subsequently make an inspection of the property in question or the property covered by that survey?

A. Yes, sir.

Q. When did you last make such inspection?

A. Last night.

Q. Have you made another sketch showing the same property?

A. I have made a map showing the various lots in the block between Baltimore and Washington Avenue and Atlantic to Ventnor, showing the present lot lines.

Q. Does this sketch which I now show you indicate the lots as they are presently divided in those two half blocks?

A. So far as I know, yes.

(Sketch offered in evidence and marked Exhibit C3.)

Q. Have you examined this tract bounded by Atlantic and Ventnor and Baltimore and Washington with the purpose of ascertaining if any of the side line restrictions have been violated?

A. I haven't gone into the detail of the lots or present buildings that are located there.

Q. Did you find or does your plan show that the garages built on the rear of the Hillman property at the lot on the southerly side of Ventnor Avenue bounded between Washington and Swarthmore are

erected on the southerly line of the Hillman property?

A. Near the southerly line, yes.

Q. You mean that they are near the southerly line or that the line is nearly southerly?

A. I mean that the garages are very close to the southerly building line or property line, rather, of the lots facing Atlantic Avenue.

Q. When you say very close, do you mean within fractions of an inch or fractions of a foot?

A. Whatever it shows on the plan.

Mr. Cole: Less than three feet, anyhow?

A. Less than three feet, yes.

The Court: Approximately three inches, are they not?

A. Approximately three inches is right.

Q. Do you know the dimensions of the garages?

A. I haven't my notes with me.

Q. I will withdraw that question and see if I can get at it in a simpler way. Can you estimate roughly the proportion of the lot occupied by the garages, of the four lots lying between Washington and Swarthmore Avenues?

A. I only can say it is a small portion of those lots. I don't know just what portion.

Q. I just want to know the proportionate space occupied by the garages to the whole space that lies between Washington and Swarthmore Avenues.

A. Seventy-six feet to a hundred and twenty-five.

Q. The proportion, then, is seventy-six to one hundred and twenty-five?

A. Approximately, yes.

Q. Is there any wall erected in prolongation of

the side of the garage along the southerly line or near the southerly line of the Hillman property?

A. It was not at the time of this survey.

Q. Was it last night?

A. I noticed a fence. I didn't pay particular attention to it. These buildings were under construction at the time I made the survey.

By the Court:

Q. Wasn't there a fence there at the time?

A. No, not at the time I made the survey.

Q. What does this indicate, then, that you have here?

A. That was a wall running from Washington Avenue, that is, a low wall at that time running from Washington Avenue to the building that was under construction.

Q. When you say low wall, what do you mean?

A. At that time it wasn't completed.

By Mr. Endicott:

Q. Did you form any opinion as to the height of the walls which are now erected on the southerly line?

A. No, I did not.

Q. Do I understand from your sketch that the two double garages consist of two buildings which are practically erected across the line dividing lots 25 and 26 and lots 27 and 28 as shown on your plan, being the four lots included in the Hillman building operation?

A. They are.

Cross-examination.

By Mr. Cole:

Q. Just what do you mean by there being a wall in the rear of the Hillman lots?

A. At the time I made the survey there wasn't any wall. The wall was being constructed between Washington—from the street to the garage as shown there, but it wasn't completed at the time I made the survey. Of course, I haven't made any examination as to its completion at this time or as to the height. That was August thirtieth, 1924, and, of course, then it was under construction.

Q. Was there a fence dividing the line?

A. Not at that time. I don't just recall whether it was concrete block or just a concrete wall starting from the east line of Washington Avenue. I am not sure just what it was.

Q. Tying up with the garage?

A. Yes.

Q. On the same line with the garage?

A. Yes.

Q. I suppose this Exhibit C3 speaks for itself as to distances, but I will ask you is the garage which you say overlaps lots 25 and 26 more than three feet from Washington Avenue?

A. Yes, sir, it is. It is ten feet and ninety-five one-hundredths.

Q. Is the same true with respect to Swarthmore Avenue?

A. Ten and ninety-seven hundredths feet. Practically the same.

Q. Now, assuming that the line dividing lots 26 and 27 is a side line, are both of those garages more than three feet away from that dividing line?

A. Yes, sir.

Q. How far are they away?
A. I should judge it was about twelve feet.

Re-direct examination.

By Mr. Endicott:

Q. Did you go to the property of Julian Hillman, which we have been examining about, for the purpose of making a survey prior to the time that any work was done on these garages?
A. I didn't go there to make any survey prior to that, no. They were just under construction when I went there to make the survey.
Q. Had your attention been called to the property before that time?
A. Yes, sir.
Q. Did you defer making a survey for any purpose?
A. Only on account of not having time. Being too busy to get it done.
Q. The first time you went to the property, was any work done on the garages?
A. The foundations had been started.
Q. Anything else?
A. Well, the buildings on the front of the lot was under construction.
Q. No. I am just talking about the garages. When you say the foundations, what do you mean?
A. When they began to lay the foundations for the garage.
Q. Did you make the survey then?
A. No.
Q. Did you go back to the property later on?
A. Yes, sir.
Q. Why did you not make the survey the first time?

A. I didn't have time. I just made a casual inspection of it and left the work at that time because I didn't have time to do it.

CLARK BARRETT, sworn for complainant.

Direct examination.

By Mr. Endicott:

Mr. Endicott: Mr. Eldredge says that his better recollection is that the time he purchased his property was April instead of June.

Mr. Cole: I am satisfied to have that changed if he wants it.

Q. Mr. Barrett, where do you live?
A. Ventnor City.
Q. What street?
A. Lafayette Avenue.
Q. Are you employed by the South Jersey Title and Finance Company?
A. I am.
Q. What is your capacity with that company?
A. Secretary of that company.

Mr. Endicott: Mr. Barrett is offered by consent on the devolution of title and the effect of restrictions.

Q. Have you made an examination of the property at Washington, Ventnor, Baltimore and Atlantic Avenues to determine whether certain restrictions affect those premises?

A. I made an examination about three years ago, at which time I summed up my conclusions in writing.

Q. Will you tell the Court what you found with respect to the restrictions affecting the property about which I have just asked you?

A. May I quote from a letter I wrote his Honor in another suit? "I have made an examination"— "Today I made an examination of the block to make absolutely sure, and the following conditions were disclosed: The block is divided by a street known as Swarthmore Avenue, and that portion bounded by Baltimore Avenue, Swarthmore Avenue, Atlantic Avenue and Ventnor Avenue is known as 107B. The portion bounded by Swarthmore Avenue, Washington Avenue, Atlantic Avenue and Ventnor Avenue is known as 107A. Joel Mason had title to the entire block and conveyed to various purchasers. In conveying block 107B, consisting of lots one to twenty-eight, inclusive, he restricted every lot except numbers 11, 14, 17, 18 and 19. In conveying 107A he restricted every lot except 7, 10 and 15."

Q. Do your records show that a map made by Joel Mason showing the property in question was filed?

A. I am not prepared to answer that because I didn't know I was going to be asked that question.

Mr. Endicott: We allege that to be so, Judge Cole, and that information came through Mr. Barrett. Do you dispute it?

Mr. Cole: I do not know. Do you really know, Mr. Barrett, what the fact is about that?

A. I couldn't answer at this time.

Mr. Endicott: Our allegation is that the map was filed in the office of the clerk of Atlantic County at Mays Landing on April first, 1912. I got that information from Mr. Barrett and supposed he would be in a position to prove it.

A. I could verify it for you very quickly.

Mr. Cole: Does that aid your recollection any, having read to you what has just been read?

A. Judge Cole, the information that I worked up on this block was three years ago.

Q. Does your information on that give you anything about the map?

A. No.

Q. When you go back, will you look that up and notify Mr. Shinn what the facts are?

A. I can verify it for you in a very few moments.

Mr. Cole: We will take his statement for whatever he says he finds.

No cross-examination.

JOEL MASON, recalled.

Direct examination.

By Mr. Endicott:

Q. Have you any knowledge of the fact whether the restrictions affecting the property which you plotted as shown on Exhibit C1 have been generally observed?

Mr. Cole: That is a conclusion.

The Court: Yes, that is rather broad. I sustain the objection.

Q. Do you know of any actions which have been instituted to protect the integrity of the restrictions affecting the property shown in C1?

Mr. Cole: If there have been any proceedings, of course they will speak. The witness' opinion will not do. I object.

The Court: I sustain the objection.

Mr. Endicott: Cannot he say that he has known of such proceedings?

The Court: The question itself may be admissible technically, but the line of examination is objectionable. I sustain the objection.

Q. Do you know of the existence of an association known as the Penrose Protective Association, organized to protect the integrity of the restrictions imposed upon the property shown in Exhibit C1?

Mr. Cole: I object. It is of no consequence if there is such an association and what its objects are.

The Court: I will permit it.

A. I have talked to some of them that belong. They have an association that has notified others in there lately of violations.

Q. Do you know whether they have prevented violations of the restrictions?

A. I don't know.

No cross-examination.

COMPLAINANT RESTS.

DEFENDANT'S TESTIMONY.

HAROLD KRAUSKOPF, sworn for defendants.

Direct examination.

By Mr. Cole:

Q. Mr. Krauskopf, what is your relation to the properties facing Ventnor Avenue between Washington and Swarthmore that have been referred to as the Hillman properties?

A. I was associated with Mr. Hillman in the building of the properties. I had charge of the building of them.

Q. Do you recall a time when Mr. Mason spoke to you touching restrictions or violations thereof?

A. Yes, sir.

Q. What was the situation on the ground with respect to these garages at that time?

A. When Mr. Mason spoke to me in regard to the garages, the trenches had been dug, the forms had been built, and they were in place ready for the pouring of concrete across from Swarthmore to Washington.

Q. Tell what took place between you at that time.

A. Mr. Mason, accompanied by the other two

gentlemen mentioned, came up and asked me about the garages, asked me what they were for, and I told him that they were garages that we were building there, and he said, "Don't you know that you can't build garages there?" I said, "No, I don't know that I can't." He said, "Well, you can't." He said, "The restriction is against it." I said, "I have no knowledge of such restriction against it," so he had a piece of paper which he showed me—he wouldn't let me take it; I asked whether I might take it away with me but he refused to let me take it with me; let me read it right then and there, that long, full sheet of paper, and I said, "Well, even after reading this I don't see that that prevents us from building the garages." Well, he said, "My interpretation of these restrictions is that it does, and I have just built two houses for Mr. Eldredge and Mr. Godfrey, I have just built the house for Mr. Godfrey and we observed them and you will have to observe them," and I said, "Well, I understand you don't own any property here at all, Mr. Mason." He says, "No, I don't own any property, but I represent Mr. Thomas," so I says, "Has Mr. Thomas instructed you to tell me this?" He says, "No, but I represent Mr. Thomas and I am going to telephone to Mr. Thomas tonight for his instructions as to what I should do in the matter and as soon as I get his telegram in reply I will bring it to you and tell you what Mr. Thomas has decided," and that was the last time that I have ever had any conversation with Mr. Mason. He never came back, he never showed me the telegram, he never told me whether he had spoken to Thomas or not, and I never heard anything more about it. In the meantime we continued in our leisurely way to build the garages, not employing a great big gang of men, as has been stated, because that was around the sixth of August,

and the garages weren't finished until the twenty-first of August, and the next I heard was when these papers were served upon me after the garages were finished.

Q. Were they finished when the notice was served, the papers in this case?

A. The garages were finished with the exception of the floor and the outside stucco. The concrete footings were in, the walls were up, the roof was finished, but the outside stucco hadn't been put on the cinder block, nor had the concrete floors been put in, because that was all done in one general paving scheme.

Q. What was the cost of the construction of those garages, each?

A. That is rather difficult to answer, inasmuch as we had contracts for eight houses and eight garages from the concrete men for their work and the brick men for their work and the stucco men and plasterers for their work.

Q. Are you a builder?

A. No, sir, not exactly a builder.

Q. Have you any basis for an opinion as to what the probable cost of those garages is, each?

Mr. Endicott: I object. He said he did not know.

The Court: I sustain the objection.

Q. What is the size of them?

A. Eight by eighteen. Approximately eight by eighteen.

Q. Is there anything dividing each garage?

A. A party wall. You mean the two together?

Q. Yes.

A. There is a party wall between them, yes, sir.

Q. Have you gone on these two tracts of land known as 107A and 107B to ascertain how many garages there are built thereon?

A. Yes, sir.

Q. When were you there?

A. Yesterday afternoon.

Q. How many garages did you find built?

A. Well, I can answer it the other way, that I found five houses that did not have garages built separately. I found ——

Q. By that do you mean that all of the buildings that are on the two tracts have garages except five?

A. Except five.

Mr. Endicott: I ask that his answer be stricken out. It is not responsive and it is designed to be particularly favorable to his aspect of the case. There are a number of lots down there that do not have houses on them and a number of cases where houses have occupied two or three lots.

The Court: That is a question of the weight of the evidence. I will permit it to remain.

Q. Did you find garages on both tracts?

A. Yes, sir.

Q. Can you presently recall how many garages you found on tract 107A?

A. No, sir. I think—I can't tell how many I found, but my recollection is——

Mr. Endicott: I object. He said he could not tell.

Q. Did you observe how many properties you observed where there were not garages with the houses?

A. Two on 107a and three ——

Mr. Endicott: I object. I think the question ought to be limited to the lots as originally planned.

The Court: I will permit it as it is.

A. ——on 107B.

Q. Mr. Krauskopf, as I understood your testimony, you said in your interview with Mr. Mason that your talk was confined to the right to have the garages there at all. Are you correct about that, or did it apply to the matter of distance?

A. Both.

Q. He mentioned both, did he?

A. Yes.

Q. Did Mr. Hillman have the ownership of all four lots running from Swarthmore to Washington Avenue on which these buildings are?

A. The entire tract, yes, sir.

Q. At the time these buildings went up?

A. Yes, sir.

Cross-examination.

By Mr. Endicott:

Q. Were you acting for Mr. Hillman and yourself in the erection of this operation?

A. Yes, sir.

Q. And were his general agent in charge thereof?

A. Yes, sir.

Q. Will you tell us the exact words which were used to you by Mr. Mason or as nearly as you can when he first came to you and the conversation took place at which Mr. Eldredge and Mr. Godfrey were present?

A. Mr. Mason came to me and spoke about first building the garages and secondly about building them within three feet of the rear line. He told me as I mentioned before, went on to say that he would get in touch with Mr. Thomas in Baltimore that night and would ask Mr. Thomas to—he was going to telegraph to Mr. Thomas and he would ask Mr. Thomas to telegraph instructions, that he would come back to me the next day with the telegram and show to me the instructions he had received from Mr. Thomas as to what he should do. He never came back.

Q. Did you understand that Mr. Godfrey and Mr. Eldredge were the owners of lots in the neighborhood covered by the same restrictions?

A. I knew that Mr. Eldredge was the owner of a lot, but I thought Mr. Mason until that time had been the owner of the other one, because he was building the house.

Q. Did Mr. Mason say to you that if you did violate the restrictions that you would be sued and an attempt made to restrain you and that the matter would be carried from court to court?

A. No. What he told me was that he thought that Mr. Thomas would instruct him to institute suit and that Thomas was an enormously wealthy man and wouldn't care how much money he spent in order to prevent it, but that was his opinion as to what Mr. Thomas was likely to do.

Q. Did he not definitely tell you that you were not permitted by the restrictions to erect your garage within three feet of the side and rear lines?

A. No. He said that his interpretation of the restrictions was that, but he couldn't tell me that we couldn't do it, because he didn't own any property there, but that he would get in touch with Thomas.

Q. Did you read all of the restrictions?

A. I read a paper that Mr. Mason handed to me that day, but which he wouldn't let me take away with me.

Q. Had you heard of the restrictions affecting this property prior to that time?

A. No, sir.

Q. Did you have any interest in the ownership of the lands?

A. The actual ownership?

Q. Yes.

A. No, sir.

Q. Well, were you to benefit by reason of it being owned by Mr. Hillman in any way?

A. By reason of the fact that I put buildings on it, yes.

Q. You were a partner in the enterprise?

A. Yes, sir.

Q. Had you had the title examined when the property was bought?

A. Are you asking me personally?

Q. Yes.

A. I had nothing to do with it when it was bought.

Q. Did you know anything about the condition of the title when the property was bought?

A. You will have to interpret that question. I don't understand it.

Q. Did you know anything about the transactions respecting the acquiring of title to this property?

A. No, sir.

Q. Did Mr. Hillman attend to that?

A. Yes, sir.

Q. And you say it was an entire surprise to you when you were told that there were restrictions affecting the property?

A. Yes, sir.

Q. What did you do after the conversation with

Mr. Mason and Mr. Godfrey and Mr. Eldredge with respect to the erection of the garages?

A. Waited for him to come back and tell me what their decision was, what they were going to do, so I would know what I was going to do. He never came back and we thought they had forgotten all about it, and I went ahead.

Q. How long did you wait?

A. Well, we went on with the work. We went right on with the work. I mean to say we didn't stop our work, if that is what you mean?

Q. When did you next do work on the garages after the conversation with Mr. Mason?

A. The next day.

Q. When was that?

A. Seventh of August.

Q. The seventh of August? When were the garages completed?

A. Twenty-first of August.

Q. Are you confident that that—do you feel certain of those dates?

A. Yes.

Q. On the twenty-first of August, to what degree of completion had the garages attained?

A. They were completed with the exception of the cement floors and the outside stucco.

Q. Had the doors been erected?

A. The doors had been put up. I don't know whether they were—they couldn't have been put exactly in place, because you had to get your grade line at the bottom for your cement. They had been hung but not with the hardware on. That is impossible to do.

Q. How could you hang them without putting the hardware on?

A. I mean to say the locks and the latches and things like that, you have to get your exact size

when you have your grade of the cement floor. They had just been put in place.

Q. Did you make any effort to see Mr. Mason again with respect to the instructions which you expected he would receive from Mr. Thomas?

A. No, sir.

Q. Was he working on the property adjoining?

A. He was practically through by that time. Mr. Godfrey said a few minutes ago he was in there by the fifteenth. That is a week later. It wasn't the property adjoining. It was two properties away.

Q. Did you see him after that time, between then and the ninth of September?

A. I saw him occasionally passing in an automobile. Never to speak to. Never close to him.

Q. You never heard from him again until the injunction was served?

A. That is all.

Q. It is a fact, is it not, Mr. Krauskopf, that each pair of garages back against each other?

A. Yes, sir.

Q. And that they cross the dividing line of lots numbers 25 and 26 and also the pair of lots 27 and 28 as shown on Exhibit C3?

A. Yes, sir.

Q. And it is also a fact, is it not, that they are within approximately four inches of the rear line of the four southerly lots, 25, 26, 27 and 28?

A. Yes, sir.

JULIAN A. HILLMAN, sworn for defendants.

Direct examination.

By Mr. Cole:

Q. Mr. Hillman, did you know at the time you took title to your lot on which the buildings in question were constructed that there were certain restrictions against building?

Mr. Endicott: I object.

(Question allowed.)

A. No, sir.

Q. When did you first learn it?

A. I can't place the exact date, but I can say that after I owned this property for over a year, we decided to build, and I had understood that there were some restrictions in the neighborhood. When we decided on an architect, Mr. Krauskopf and I, my particular instruction to the architect was to go to the title company and get a copy of the restrictions and make sure that the plans that he designed —the buildings that he designed should fit the restrictions on the ground, and he was instructed to thoroughly familiarize himself with the restrictions.

Q. And did you suppose that the buildings were being placed there in obedience to the restrictions?

A. Oh, yes, absolutely.

Q. Do you recall whether there were any restrictions set forth in the deed which you had, which you got from your grantor?

A. No, sir, there are no restrictions in the deed that I hold. Wel, I won't say that there are no restrictions, because there are certain restrictions. As far as this restriction of Joel Mason is concerned, it is not in the deed.

Q. Did you have your title insured?

A. Yes, sir.

Q. Was the insurance free of these restrictions?

A. To my best recollection, yes, sir.

By Mr. Endicott:

Q. You haven't your title policy here, have you?

A. No, sir.

TESTIMONY CLOSED.

DEPOSITION.

IN CHANCERY OF NEW JERSEY.

Between JOHN L. THOMAS, *Complainant,* and JULIAN HILLMAN, *et als.*, *Defendants.*	On Application for Injunction.

Deposition of WILLIAM S. THOMAS, taken before C. W. MYROSE, Notary Public of New Jersey, on January 21st, 1925, in the office of Messrs. Endicott

and Endicott, Freeman Building, Atlantic City, N. J., in the presence of JOHN E. ISZARD, ESQ., appearing for MESSRS. ENDICOTT AND ENDICOTT, solicitors for complainant, and CLARENCE L. COLE, JR., appearing for MESSRS. COLE AND COLE, solicitors for defendants.

WILLIAM S. THOMAS, sworn.

Direct examination.

By Mr. Iszard:

Q. Mr. Thomas, where do you reside?

A. In Baltimore City, Maryland.

Q. Are you an attorney-at-law of the State of Maryland?

A. Yes, sir.

Q. Are you a brother of John L. Thomas, the complainant in this suit?

A. Yes, sir.

Q. Have you been in actual charge of the property owned by your brother and concerning which this suit is brought, at Ventnor and Swarthmore Avenues in Ventnor, New Jersey?

A. Yes, sir; the property is on two streets, Washington Avenue and Swarthmore Avenue. The property was originally bought by me and subsequently I deeded it to my brother, and I have had charge of the property for my brother ever since he owned it.

Q. When was your attention first called to the fact that there were violations of restrictions being made down there affecting your brother's property?

A. Some time last August. Joel Mason, a real estate agent in Ventnor City, and who has charge of

this property of my brother's for sale, telephoned me at Baltimore that Mr. Hillman, who owns the Ventnor front of the property between Washington and Swarthmore Avenues, was improving the same and that in improving it he was building two garages, one facing Washington Avenue and one facing Swarthmore Avenue, and that in his, Mason's judgment, the building restrictions with regard to the distance they should be from the side lines and the front of the streets was not being complied with but was being infringed. He stated that he had notified Mr. Hillman's partner—I don't recollect what his name was—that the footings indicated that the building restrictions weren't being complied with, and asked me what my brother's attitude was about. I told him he wanted the building restrictions complied with and asked him whether he had had it surveyed to find out that he was correct in his view of the case, and he said he had not. I then informed him to have it surveyed to find out whether the restrictions were being violated, and to notify Mr. Hillman that my brother wanted the restrictions complied with, which Mason said he had already done.

Q. Was the partner's name Harold Krauskopf?

A. Yes.

Q. Had Mr. Joel Mason been employed by you to look after these properties for you?

A. Yes. Not only these properties, but a great many other properties that I own in Atlantic City, myself and my brother.

Q. Did you order him to employ Estel D. Rightmire to make this survey, or did you leave the selection of the surveyor to Mr. Mason?

A. I told Mr. Mason to employ a surveyor and he employed a surveyor, and when I came down here—I was down here, I think, at the Traymore

Hotel, and Mason telephoned me that Mr. Rightmire had surveyed the property. It took him quite a little while to do it. It seems he is a very busy gentlemen. Then, according to the survey, it showed, in my judgment, that the property was infringed. I showed it to my brother who was at the Traymore at the time, and we came around to Mr. Endicott's office and asked him to institute an injunction suit.

Q. What time was that?

A. It was in September. I don't remember. The early part of September, sometime.

Q. Mr. Thomas, had you ever known of any other violations down there affecting your property prior to these violations?

A. No, I don't think there was any one ever violated any of the restrictions on any of the lots while I owned them or my brother owned them. There may have been garages built there, but they were built on lots not contiguous to either his or mine. I didn't go down to the property, of course, constantly. I lived in Baltimore. There may have been violations which I didn't know of, but at the present time I don't know of any. Mason never reported any violations. This is the only thing he reported, and he was going around there all the time.

Q. Did your brother ever have actual and active charge of the property himself?

A. My brother left the management of this property entirely to me.

Q. And everything that was done or that was to be done in regard to this property, it was your duty to do?

A. Yes, sir.

Cross-examination.

By Mr. Cole:

Q. Did your brother specifically authorize you to institute this Chancery suit?

A. Yes, sir. He instituted it himself.

Q. Did you or your brother, so far as you know, ever have any talk about this matter with Mr. Hillman or his partner, Mr. Krauskopf?

A. I didn't, and I know my brother didn't.

Q. So far as you know, any notification that the defendants had was through Mr. Mason; is that true?

A. Yes.

Q. And, of course, you don't know what actually took place between them?

A. No.

Q. After you received advice from Mr. Mason that the defendants were violating the restrictions, did you then, or your brother, so far as you know, notice Mr. Hilman or his partner in any way?

A. Notice notifying ——

Q. Notify him in any way that he must cease?

A. I told Mason over the phone the same day that he telephoned me to notify Mr. Hillman that the building restrictions would be enforced and he said that he had done that, and I then told him on account of the uncertainty as to whether Mason was correct in diagnosing this situation, to employ Mr. Rightmire to have the survey made and see whether Mr. Hillman actually was over the line.

Q. But do you know whether or not Mr. Mason communicated your attitude and your brother's attitude to the defendant's?

A. Only through what Mr. Mason told me.

Q. Do you know that it has always been the contention of the defendants when in conversation with Mr. Mason that they had a right to do what they were doing on the premises in question and that they were not violating the restrictive covenant?

A. I only gather that from the affidavit which Mr. Hillman filed in the case, and their answer.

Q. And are you prepared to say that the restrictions in question have not been violated by other property owners?

A. No, sir, I could not. I don't know. It would require a survey, and I am not sufficiently familiar. To the best of my knowledge I will say, however, that those restrictions were never violated while I or my brother owned that property.

Q. But that could have happened without your knowledge, could it not, Mr. Thomas?

A. It may have, yes, sir.

Q. In the answering affidavit in this case, Mr. Krauskopf testified Mr. Mason told him that he, Mason, would advise him the attitude of Mr. Thomas upon informing said Thomas of the alleged violations. In this affidavit Mr. Krauskopf also states that no further word was heard from Mr. Mason upon this subject and after August sixth, 1924, when originally notified by Mason that the restrictions were being violated. Do you have any knowledge of why such notifications was not given the defendants by Mr. Mason, if it wasn't given?

A. No, sir.

Q. Do you own any property yourself affected by these restrictions?

A. No, sir.

Q. Do you know that at the time suit was instituted the garages in question were enclosed and practically completed and all that remained to be

done was the placing of the flooring and outside stucco and ornaments?

A. I saw the garages the day before the suit was instituted. It seemed to me there was a good deal of work to be done on them. Exactly how much, I don't know. The only thing I noticed that was complete about it was the walls and possibly the roof was on it, but there were no doors on the garage and no stucco. Cement blocks, I think they were; I am not certain of that. Cinder blocks, wasn't it? However, I am not certain what that garage was built of, but it seems to me it was cinder blocks.

Q. But don't you think it was substantially completed at the time this suit was brought?

A. No, I can't say—I don't think it would cost very much to move it. The construction isn't expensive, if I am correct about it being cinder blocks.

Q. Did you see the property on or about August twentieth, 1924?

A. No, sir.

Q. So that you don't know, of course, how far the work had progressed at that time?

A. No, sir.

Q. How soon did you take action upon being notified by Mr. Mason that the restrictions were being violated?

A. Immediately. I notified Mason to have an engineer to survey and I came down to Atlantic City the latter part of August and hunted Mason up, asked him about the survey and got after Mr. Rightmire, who, it seems, is a very busy man, and as soon as I received the survey from Mason, the same day I employed Mr. Endicott, and I think it was the next day that the injunction was gotten out. I know the bill was prepared right away.

Q. And in point of time, how long was that, if you recall, after your conversation with Mr. Mason?

A. Well, I really couldn't say, time flies so, but if Mason is correct in stating that he telephoned me August twentieth, it wasn't until about the sixth of September, I believe, that we got Mr. Rightmire's survey.

Q. So that considerable time elapsed between your talk with Mr. Mason and the survey?

A. Just about that much time.

Q. And in the meanwhile, I assume, you did not have very substantial justification for charging that the restrictions were being violated until you had this survey?

A. Exactly. That was the only reason for the delay. I didn't want to make a charge against Mr. Hillman unless it was correct, and a survey was the only was to disclose that.

Q. And by that time the building was practically done, wasn't it?

A. Well, as I said before, I don't think the building was practically done. Besides, I don't think Mr. Hillman ought to have gone on in view of the notice he had received and completed the building unless he was certain that his building was properly located.

Q. However, you don't know except by hearsay whether or not he ever received any notice, do you, Mr. Thomas?

A. No, sir, I do not, and his affidavit here filed in the case, which admits a notice, for whatever it is worth.

I hereby certify that the foregoing is a true and correct transcript of the proceedings in the before entitled cause.

C. W. Myrose,
Notary Public of New Jersey.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between
JOHN L. THOMAS,
Complainant,
and
JULIAN HILLMAN, *et als.*,
Defendants.

On Bill for Injunction.
Conclusions.

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

MESSRS. ENDICOTT & ENDICOTT, for the complainant.
MESSRS. COLE & COLE, for the defendants.

INGERSOLL, V. C.:

The complainant and defendants are each owner of lots upon a tract of land bounded by Ventnor, Washington and Baltimore Avenues in Ventnor City, New Jersey.

This tract was owned by one Joel Mason, who in the conveyances of the lots imposed thereon restrictions, of which the clause now under consideration is: "That no building shall at any time be erected nearer than 12 feet of the front property line

of any street or avenue, nor within 3 feet of the side property line of any street, or avenue, on any corner lot, except where a party may own two or more contiguous lots, then a building may be erected on any part of the lot or lots, the owner thereof may desire, without regard to intervening line or lines, provided same is not built within 3 feet of outside line of the said lots, nor within 12 feet of the front property line thereof."

The defendants are the owners of lots 25, 26, 27 and 28 of block 107A of said restricted tract. Lot 25 is the corner of Ventnor and Washington Avenues. Lot 28 is the corner of Ventnor and Swarthmore Avenues, and lots 26 and 27 are between, but fronting on Ventnor Avenue.

Upon each of the lots is erected a dwelling house, and no complaint is made that these dwellings violate any restriction. Upon the rear of each lot is erected a garage, each of which is within a few inches of the rear line of the lots. The ones on lots 25 and 26 are one continuous structure with the party wall upon the line between the two lots. The ones on lots 27 and 28 are similarly built, with the party wall on the line between these two lots. No part of any of these garages is within 12 feet of the front property line of any street or avenue, nor within 3 feet of the side property line of any street or avenue on any corner lot; and clearly do not violate that restriction.

It is claimed, however, that they are within the exception thereof; that where a party may own two or more contiguous lots, he may build without regard to intervening lines, provided "same is not built within 3 feet of outside lines of said lots."

It is evident that the owner did not build without regard to intervening lines, although he owned contiguous lots. Each lot and the buildings thereon is

a unit and each house and garage is complete on its respective lot.

In *Fortescue v. Carroll,* 76 N. J. Eq. 583, the Court of Errors and Appeals held, that "Courts of Equity do not aid one man to restrict another in the uses to which he may lawfully put his property, unless the right to such aid is clear."

Following this statement of the law, the bill will be dismissed.

Determined: October 26th, 1925.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between JOHN L. THOMAS, *Complainant,* and JULIAN HILLMAN, *et als.,* *Defendants.*	On Bill for Injunction. Final Decree.

This cause having been heard in the presence of Allen B. Endicott, of Endicott and Endicott, solicitors for the complainant, and C. L. Cole, of Cole and Cole, solicitors for the defendants, on bill, answer, replication and proofs in open court, and the Court having considered the pleadings, proofs and argument of respective counsel and being of the opinion that the complainant is not entitled to an

injunction or any relief under the bill filed, and that the same should be dismissed;

It is on this fourth day of November, 1925, on motion of Cole and Cole, solicitors of defendants, ordered that complainant's bill be and the same is dismissed with costs and that defendants be and they are allowed a counsel fee of $50.00 to be taxed with the costs and collected according to the rules and practice of this court.

E. R. WALKER,
C.

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

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between
JOHN L. THOMAS,
Complainant,
and
JULIAN HILLMAN, *et als.*,
Defendants.

On Bill, Etc.
Notice of Appeal.

The complainant, John L. Thomas, hereby appeals from the final decree made in the above entitled cause on the fourth day of November, nineteen hundred and twenty-five (1925), and from the whole and

every part thereof, to the Court of Errors and Appeals in the last resort in all causes.
Dated: December 19, 1925.

ENDICOTT & ENDICOTT,
Solicitors for and of Counsel with John L. Thomas.

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

ALLEN B. ENDICOTT,
Of Counsel with Complainant, John L. Thomas.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between JOHN L. THOMAS, *Complainant-Appellant,* and JULIAN HILLMAN, *et als.*, *Defendants-Appellees.*	On Appeal from the Court of Chancery. Petition of Appeal.

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

The petition of John L. Thomas, a resident of the City of Baltimore, in the State of Maryland,

the appellant in the above entitled cause, respectfully shows that:

Petitioner finds himself aggrieved by the final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the fourth day of November, 1925, in a certain cause in said Court of Chancery, wherein the said John L. Thomas is complainant, and the said Julian Hillman, *et als.*, are defendants, in this respect, to wit:

That the said decree adjudges that:

1. That complainant's bill be, and the same is dismissed, with costs, and that defendants be, and they are allowed a counsel fee of fifty ($50.00) dollars.

2. Because it failed to find and enjoin the alleged violations of the restrictions set forth in complainant's bill, respecting lots in said bill described, in the following respects (designations of the lots hereinafter referred to, being the designations appearing in complainant's bill) viz.:

(a) The garage erected on Lot No. 25 violates said restrictions in manner following: First, it violates the provision that "not more than one building shall be at any time erected on any lot;" second, it is erected within three feet of the side line dividing lots Nos. 25 and 26; third, it is erected nearer than twelve feet to Washington Avenue, which is the front property line of said lots, so far as said garage is concerned; fourth, it is built within three feet of the side property line, dividing Lots Nos. 25 and 23, Lot 23 being part of complainant's lands.

(b) The part of the garage erected on Lot No. 26, violates said restrictions in manner following: First,

it violates the provision that "not more than one building shall be at any time erected on any lot;" second, it is erected nearer than three feet to the side property line dividing Lots Nos. 25 and 26; third, it is erected nearer than three feet to the side property line dividing Lots 26 and 23.

(c) The garage erected on Lot No. 27 violates said restrictions in manner following: First, it violates the provision that "not more than one building shall be at any time erected on any lot;" second, it is erected nearer than three feet to the side line dividing Lots 27 and 28; third, it is erected nearer than three feet to the side property line dividing Lots Nos. 27 and 24.

(d) The garage erected on Lot No. 28 violates said restrictions in manner following: First, it violates the provision that "not more than one building shall be at any time erected on any lot;" second, it is nearer than three feet to the side property line dividing Lots Nos. 27 and 28; third, it is built nearer than three feet to the side property line dividing Lots Nos. 28 and 24; fourth, because part of said garages is built nearer than twelve feet to Swarthmore Avenue, which avenue, so far as said garage is concerned, is the front property line of said lot.

ENDICOTT & ENDICOTT,
Solicitors for the Complainant-Appellant.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

JOHN L. THOMAS,
Complainant-Appellant,

and

JULIAN HILLMAN, *et als.*,
Defendants-Appellees.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF COMPLAINANT-APPELLANT.

The bill in this cause was filed to restrain alleged violations of a restrictive scheme.

The complainant and defendants are each owners of lots upon a tract of land bounded by Ventnor, Washington and Baltimore Avenues, in Ventnor

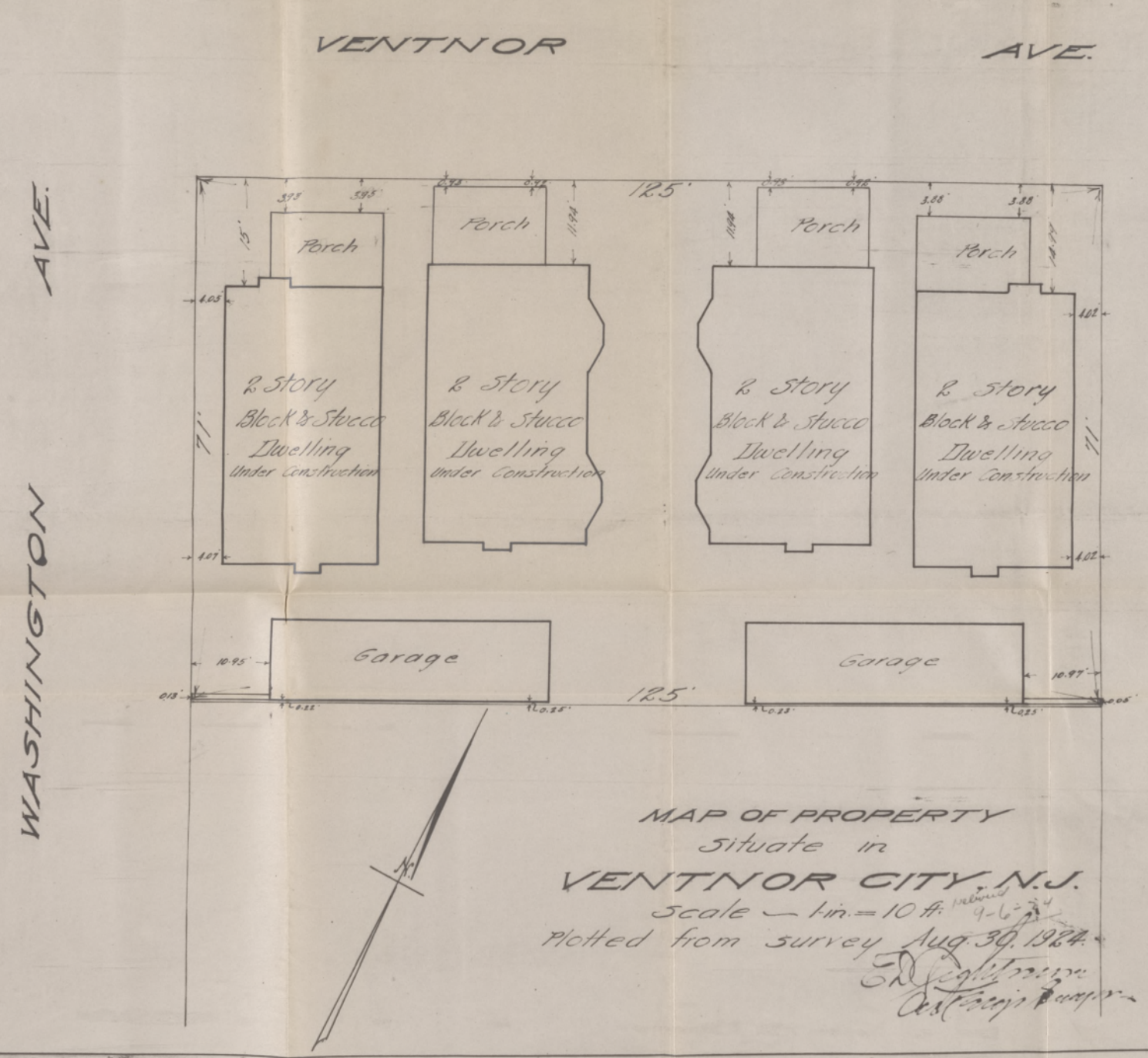
New Jersey State Library

City. This tract was once owned by Joel Mason, who, in conveying the lots, imposed thereon restrictions, of which the clause now under consideration is:

> "That no building shall at any time be erected nearer than twelve feet of the front property line of any street or avenue, nor within three feet of the side property line of any street, or avenue, on any corner lot, except where a party may own two or more contiguous lots, then a building may be erected on any part of the lot or lots, the owner thereof may desire, without regard to intervening line or lines, provided same is not built within three feet of the outside line of the said lots, nor within twelve feet of the front property line thereof."

The entire restrictions are printed, beginning, on page 9, of the state of the case.

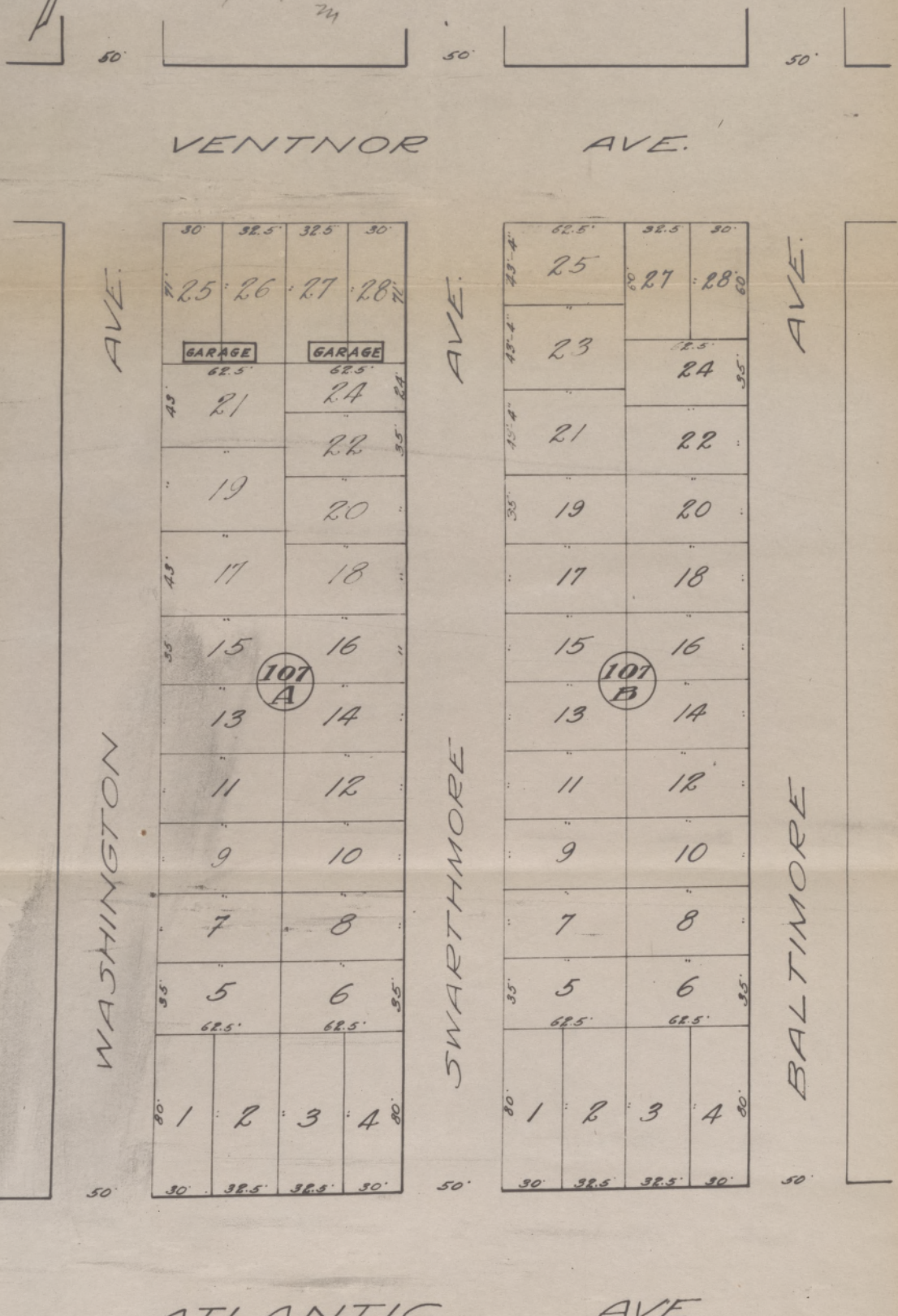
Exhibits C2 and C3 are surveys showing *locus in quo*. They clearly show the character of the structures erected, and are printed herewith.



MAP OF PROPERTY
Situate in
VENTNOR CITY N.J.
Scale — 1 in. = 10 ft. Revised 9-6-24
Plotted from survey Aug. 30. 1924.

MAP OF LOTS
Situate in
VENTNOR CITY, N.J.
Scale — 1 in. = 50 ft.

C3
5/13/25



The defendants are the owners of lots 25, 26, 27 and 28 of block 107a of said restricted tract. Lot 25 is the corner of Ventnor and Washington Avenues. Lot 28 is the corner of Ventnor and Swarthmore Avenues, and lots 26 and 27 are between, but fronting on Ventnor Avenue.

Upon each of the lots is erected a dwelling house, and no complaint is made that these dwellings violate any restriction. Upon the rear of each lot is erected a garage, each of which is within a few inches of the rear line of the lots. The ones on lots 25 and 26 are one continuous structure with the party wall upon the line between the two lots. The ones one lots 27 and 28 are similarly built, with the party wall on the line between these two lots.

ARGUMENT.

It is apparent that the intention of Joel Mason, who created the restrictive scheme in question, was to prevent the erection of buildings within twelve feet of the front property line, and three feet of the side line of the lots contained within the tract. Defendants have erected four dwellings on four lots facing Ventnor Avenue, a main thoroughfare. They have erected four garages within a few inches of the rear end of their property line, assuming that the facing of their houses on Ventnor Avenue constitutes a selection of the Ventnor Avenue line as the front property line.

It has been determined that for the purposes of such building covenants, the front property line applies to both the front and side lines of corner lots. 74 *New Jersey Equity,* page 288.

It is clear, therefore, that these garages are erected in violation of the restrictions, in the following respects:

That the garage on lot 25 should not have been erected within three feet of the side property line dividing lots 25 and 26, nor within three feet of the side property line dividing lots 25 and 21;

That the garage erected on lot 26 should not have been erected within three feet of the side property line dividing lots 25 and 26, nor within three feet of the side property line dividing lots 26 and 21;

That the garage erected on lot 27 should not have been erected within three feet of the side property line dividing lots 27 and 28, nor within three feet of the side property line dividing lots 24 and 27;

That the garage erected on lot 28 should not have been erected within three feet of the side property line dividing lots 27 and 28, nor within three feet of the side property line dividing lots 24 and 28.

It should be noted that in Exhibit C3, printed in this brief, lot 21 is, in fact, lot described as lot 23 in the petition of appeal. Lot 23, as shown on the

developers' plan was eliminated, so that lots Nos. 17, 19 and 21 in block 107a might be enlarged.

It may be argued that there is no prohibition against building up to the back property line, and that, therefore, the defendants were justified in erecting their garages up to the lines of Lots 21 and 24. This argument is not tenable, because although the side line is the back end of defendants' lots, yet it is the side property line of complainant's lots.

In addition to that fact, it was held that corner lots have two fronts. Therefore, the lines dividing lots 25 and 21, and lots 28 and 24 are side lines. In any event, the lines dividing lots 25 and 26, and lots 27 and 28 must be held to be side lines, and the erection of the garages over the three-foot restricted area must constitute a violation of the restrictive covenants.

It is contended that the garages, as erected, constitute violations as hereinbefore set forth, and that if defendants rely upon the exception to the rule, which permits them to build without regard to intervening side lines, when the builder owns two or more contiguous lots, then the prohibition that same shall not be built within three feet of the outside lines of said lots is violated.

It is quite apparent that the defendants have built their garages without regard to intervening side lines, because they have erected party walls on the lines dividing lots 25 and 26, and lots 27 and 28. If they chose to treat their operation as an entirety, then they must obey, or be compelled to obey

the restriction that none of their buildings should be built within three feet of the outside lines of said lots.

ENDICOTT & ENDICOTT,
Solicitors for Complainant-Appellant.
ALLEN B. ENDICOTT, JR.,
Of Counsel.

30 MAY.T.1926

New Jersey Court of Errors and Appeals

Between
JOHN L. THOMAS,
Complainant-Appellant,
and
JULIAN HILLMAN, *et al.*,
Defendants-Respondents.

ON APPEAL FROM CHANCERY.

RESPONDENTS' BRIEF.

STATEMENT.

The bill was to enforce certain alleged restrictive covenants, and an injunction was denied and the bill dismissed.

Respondents' property is located on Ventnor, Swarthmore and Washington Avenues in Ventnor City and it faces Ventnor Avenue which runs from one end of Ventnor City to the other. Respondents' lots face Ventnor Avenue as do all other lots in that neighborhood.

As stated by the Vice-Chancellor, the whole controversy is over the presence of garages in the rear.

Appellant's property faces Washington Avenue immediately adjacent to respondents', facing Ventnor Avenue.

The language of the restrictive covenant under consideration is:

> "*That no building shall at any time be erected nearer than twelve feet of the front property line of any street or avenue nor within three feet of the side property line of any street or avenue, on any corner lot,* except where a party may own two or more contiguous lots, then a building may be erected on any part of the lot or lots, the owner thereof may desire, without regard to intervening line or lines, provided same is not built within 3 feet of outside line of the said lots, nor within 12 feet of the front property line thereof."

As we understand it, appellant's contention is that the line between his property and that of respondents is a side line and that Washington Avenue is a front property line in his favor as against the respondents, and that the garages are not only too near to what he claims to be the side line but are also too near to Washington and Swarthmore Avenue as front property lines and are built over the intervening lines of respondents' property. As stated by the Vice-Chancellor, there was no claim that the respondents violated the restrictive covenants in any other regard. The map offered in evidence will exhibit the physical conditions.

ARGUMENT.

I.

THERE IS NO VIOLATION OF THE COVENANTS INVOKED.

Corner lots do not have two fronts. *Scull v. Eilenberg,* 94 N. J. Equity, page 759.

It follows that the front line of respondents' property is Ventnor Avenue and that Washington and Swarthmore Avenues are side lines, and, of necessity, his line adjoining appellant's property on Washington Avenue is a rear line and not a side line. There is no restriction upon respondents' rear line. The map shows the lots as facing Ventnor Avenue and such was the original owner's intention (see testimony, page 34). The buildings were accordingly built. The best that can be said for appellant is that as to this phase the matter is in doubt and this defeats him. *Fortescue v. Carroll,* 76 Equity 583. Respondent's right to build the garages over the intervening lines of his four lots is expressly granted by the plain language of the quoted covenants.

It may be contended that the garages violate the covenant which prohibit more than one building on a lot. We do not recall that this was argued before the Vice-Chancellor. He seems not to have treated this point in his conclusions.

II.

THERE WAS A PRACTICAL INTERPRETATION OF THE COVENANT AS TO NOT MORE THAN ONE BUILDING, &c.

There are from ten to fifteen garages within the blocks covered by the restrictive covenants (Testi-

mony, line 30, page 34). Some were erected six or seven years before respondent began the erection of his (Testimony, page 35). Mason, who imposed the restriction, built garages and he did not consider it a violation of the covenants (page 35). He said (at page 35) that when he spoke of not more than one building he meant there should be no double houses.

III.

THERE IS NO SUFFICIENT PROOF OF A GENERAL SCHEME.

The bill alleges that there were some deeds in which the restrictive covenants were not inserted. There was no direct proof offered of the filing of a map nor how many deeds out of the original grantor contained the restrictions. The testimony of Mr. Barrett at page 55 shows that eight lots are unrestricted. So many omissions in two small blocks is fatal to a general scheme. *Scull v. Eilenberg, supra.*

Assuming that originally it was intended that no garage should be built on a lot separate and distinct from the residence, further assume there has been no practical interpretation of the covenant, the numerous violations would make it highly inequitable to enforce the covenants against the respondent, especially since all the violations are within such a comparatively narrow area.

The decree was equitable and should be affirmed.

Respectfully submitted,
COLE & COLE,
Solicitors for Respondents.
C. L. Cole,
Of Counsel.