

*Complaint—Exhibit A*

insurance agents to whom he may have brokered business.

It is expressly understood and agreed that the party of the first part will obtain from the companies whom he is representing a full and complete statement of his indebtedness to the company which statement shall be over the signature of the Treasurer or some other officer authorized to make the statement of the insurance company.

It is expressly understood and agreed that the party of the first part upon the delivery of a bill of sale will enter into an agreement wherein he will agree not to engage directly or indirectly or by means of agents, servants or employees in any line of insurance excepting life or accident insurance in the State of New Jersey, for a period of seven (7) years from the 1st of September, 1925. Provided, however, that the party of the first part agrees that he may take out a broker's license and broker insurance to the party of the second part, receiving from the party of the second part the regular broker's commission.

It is further covenanted and agreed that the said party of the first part will not directly or indirectly or by means of agents, servants or employees write any risk of insurance other than life insurance or accident insurance on persons or property situated in the State of New Jersey for a period of seven (7) years from the date hereof unless the said business controlled by the party of the first part is brokered to the party of the second part his heirs, successors or assigns.

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It is further covenanted and agreed that the party of the first part will assist the party of the second part in any way in carrying on the insurance business which the party of the first part now has excepting life insurance and accident insurance, especially with reference to renewals of existing policies.

The party of the second part covenants and agrees that he will not show nor has he shown the records of the insurance business to any person, or persons, corporation, agent or servant excepting the party of the second part hereto and special agents of insurance companies, represented by the party of the first part.

As an additional consideration to the party of the first part from the party of the second part it is agreed in consideration of the party of the first part refraining from engaging in the insurance business in the State of New Jersey excepting life and accident insurance for the period of 7 years the party of the first part agrees to pay to the party of the second part 5% commission of the gross insurance business transacted by the party of the second part for 1 year from September 1, 1925 to September 1, 1926, which 5% commission shall be payable semi-annually, March 1st and September 1st.

Attached hereto and made a part hereof is a schedule of the goods and chattels which the party of the first part does grant and convey unto the party of the second part his heirs, executors, administrators, successors and assigns.

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**New Jersey State Library**

New Jersey  
Court of Errors and Appeals

**Complaint.**

10

(Filed June 28/1927)

IN CHANCERY OF NEW JERSEY

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

Your complainant, Samuel Kaufman, of the  
City of New Brunswick, County of Middlesex and  
State of New Jersey, respectfully shows: 20

1. That on the 21st day of August, 1925, your  
complainant and Meyer A. Reubin, entered into  
a written contract, a true copy of which is hereto  
annexed and made a part hereof and is marked  
Exhibit A.

2. That on or about the 21st day of August,  
1925, the defendant, Meyer A. Reubin, in accord- 30  
ance with the said agreement, marked Exhibit A,  
executed and delivered a Bill of Sale for the real  
estate and insurance business heretofore con-  
ducted by him in the City of New Brunswick,  
County of Middlesex and State of New Jersey,  
which Bill of Sale was attached to and formed a  
part of the aforesaid agreement, which said agree-  
ment is marked Exhibit A.

3. That your complainant has complied in every 40  
respect with all the conditions and covenants in  
the agreement hereinbefore referred to.

Complaint

10 4. The said defendant covenanted and agreed that he would not re-engage either directly or indirectly in any line of insurance business on persons or property for a period of seven years in the State of New Jersey, excepting life and accident insurance; that under the terms of the aforesaid agreement, he was permitted to broker any and all kinds of insurance through the party of the second part.

20 5. The said defendant is now and since the making of the aforementioned agreement engaged in all lines of insurance business and is doing business and writing risks of insurance on property not only situated in the City of New Brunswick, County of Middlesex and State of New Jersey, but in all cities in the State of New Jersey, in direct contravention to the aforesaid agreement.

30 6. The said defendant has also since the making of the aforementioned agreement caused to be organized a company known as Kussack & Company, of which company the said defendant is the president thereof, and which company has its general office in the City of New Brunswick, New Jersey, and is engaged in the general insurance business; and that the said defendant by reason of his connection with the said company, as an officer of said company, is carrying on general insurance business in the City of New Brunswick and by reason thereof, the said defendant is violating the terms of the aforesaid agreement.

40 Your complainant is without adequate remedy in the Courts of law, and, therefore, prays:

Complaint

1. That the defendant, Meyer A. Reubin, may answer this Bill of Complaint, without oath, and each statement therein made.

2. That a writ of Subpoena may issue, commanding the defendant, Meyer A. Reubin, to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises. 10

3. That a writ of injunction be issued, adjoining and restraining the said defendant, Meyer A. Reubin, his agents or employees from engaging in the insurance business excepting life insurance and accident insurance, as more fully described in paragraphs 5, 6 and 9, of the agreement, marked Exhibit A, and in all respects fully and faithfully perform the terms of said agreement, as shall be agreeable to equity and good conscience. 20

4. That the complainant shall have such further and other relief as shall be equitable and just.

PAUL W. EWING,  
Solicitor for and of Counsel  
with Complainant.

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

Samuel Kaufman, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am the complainant mentioned in the annexed Bill of Complaint and have read the statements in said Bill of Complaint, and so far as they relate, to my knowledge, they are true and so far as stated on information and belief, I believe them to be true. 40

*Complaint*

2. That on August 21, 1925, I entered into a written agreement with the defendant, Meyer A. Reubin, as appears in the agreement hereto annexed, marked Exhibit "A."

10 3. That on or about the 21st day of August, 1925, the said Meyer A. Reubin, who had heretofore been conducting a general insurance business in the State of New Jersey, with office at 45 Paterson Street, New Brunswick, New Jersey, in conformity with the covenants and agreements contained in the aforesaid agreement, marked Exhibit "A," annexed hereto, executed and delivered to me a Bill of Sale, thereby transferring to  
20 me the aforesaid insurance business.

4. That at the same time, according to paragraphs 5, 6 and 9, of said agreement, the said defendant covenanted and agreed that he would not re-engage in the general fire insurance business within the confines of the State of New Jersey, for a period of seven years, excepting the writing of accident and life insurance, and also that permission was given to him, under the terms of the said agreement, which will more fully  
30 appear by reference thereto, to broker all general insurance through me.

5. The said defendant, Meyer A. Reubin, is at the present time engaged in the general insurance business with office located at 810 Broad Street, Newark, N. J., and another office located in the Harrison Building, New Brunswick, N. J., and is carrying on general insurance business, including the issuance of policies of insurance on persons  
40 and property located in the State of New Jersey,

*Complaint*

in direct contravention to the covenants and agreements entered into by the said Meyer A. Reubin, more specifically set forth in the agreement annexed hereto.

6. I know from my own knowledge that Meyer  
10 A. Reubin, has re-engaged in the fire insurance business in the City of New Brunswick, and other places throughout the State of New Jersey; for upon information coming to me respecting the new business started by the defendant, I visited the Harrison Building, New Brunswick, N. J., and observed on the door of the private office of Kussack and Company, the following printing,—  
"Kussack and Co., Meyer A. Reubin, President, Real Estate, Insurance and Mortgages."  
20 And I also have in my possession a bill issued by the said Kussack and Company, to one Peter C. Jensen, Inc., 106 Church Street, New Brunswick, N. J., a true copy of which is hereto annexed and marked Exhibit "B," from which it conclusively appears that Meyer A. Reubin, issued a policy of insurance covering the office furniture and fixtures of the above named Peter C. Jensen, Inc.

7. That at the time of the sale of the aforesaid  
30 business mentioned and described in the agreement hereto annexed, I paid to the said defendant the full consideration mentioned in the said agreement and have complied with all the terms thereof; and the covenant of the said defendant not to re-engage in the general insurance business for a period of seven years, was one of the material and inducing causes which prompted me to purchase the business.  
40

*Complaint—Exhibit A*

8. That unless the defendant, Meyer A. Reubin, be restrained from conducting the general insurance business in the City of New Brunswick, and also the State of New Jersey, irreparable damage will be sustained by me.

10 I, therefore, pray that an injunction be issued restraining the said defendant, his agent or employees, in engaging in the general insurance business, excepting the writing of life and accident insurance, in accordance with the agreement, marked Exhibit "A."

(Signed) SAMUEL KAUFMAN, (LS)

20 Sworn and subscribed to before me this 27th day of June, 1927.

(Signed) Samuel G. Cohen,  
Attorney at Law in New Jersey.

**Exhibit A.**

30 THIS AGREEMENT made the twenty-first day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-five, between Meyer A. Reubin of the City of New Brunswick, County of Middlesex and State of New Jersey, hereinafter referred to as the party of the first part and Samuel Kaufman, of the City of New Brunswick, County of Middlesex and State of New Jersey, hereinafter referred to as the party of the second part.

40 The party of the first part agrees to sell and the party of the second part agrees to buy the

*Complaint—Exhibit A*

insurance business heretofore carried on by the party of the first part for the sum of Seven Thousand Two Hundred and Fifty Dollars (\$7250.00) lawful money of the United States to be paid in the following manner:

\$1000.00 upon the signing of this agreement, receipt whereof is hereby acknowledged by the party of the first part. 10

Balance of the purchase price to be paid in the following manner:

\$4000.00 in cash upon the delivery of a bill of sale on or about September 1, 1925.

\$2250.00 by way of a series of notes, seven (7) 20 notes in the amount of Two Hundred Fifty Dollars (\$250.00) and one (1) note in the amount of Five Hundred Dollars (\$500). Said notes to bear interest at the rate of six (6%) per centum per annum. The 7 notes for \$250.00 shall be payable in 3-6-9-12-15-18-21 months after September 1, 1925, and the note for \$500.00 shall be due and payable 2 years after date. In the event the party of the second part shall default in the payment of any one note after a lapse of 15 days each and 30 every unpaid note shall be immediately due and payable.

The party of the second part hereto agrees that he will deposit with A. C. Streitwolf upon the signing of this agreement the sum of \$4000.00 which sum of \$4000 shall remain on deposit until such time as the party of the first part liquidates and pays all indebtedness to insurance companies whom he now represents as an agent, and to all 40

*Complaint—Exhibit A*

The party of the first part hereto does covenant and agree that the party of the second part his heirs, executors, administrators, successors and assigns may use the name Reubin in connection with the said business, for a period of 7 years.

10

It is expressly understood and agreed by and between the parties hereto that the sale of this agency includes the sale of all records and policy renewals.

The party of the first part agrees that he will pay the insurance companies which he represents for all business including September items and that he will obtain from the insurance companies releases releasing the party of the second part from any liability for policies issued by him. The party of the second part agreeing that when he is appointed agent of the said companies so represented by the party of the first part he will, at the request of the party of the first part, mail out cancellation notices, cancelling any policy which the party of the first part has not been paid the premium, and that he, the party of the second part, will return to the party of the first part any and all return premiums which may be paid to him.

20

The party of the second part agrees that from and after September 1, 1925 he will take over the management and expense of the said office and pay the salaries of any and all clerks employed by him, that in addition to that he will pay all rent that may be due the owner of the premises.

30

40

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That the party of the second part further agrees that he will grant to the party of the first part the right of ingress and egress to the offices for the purpose of liquidating that portion of the business which the party of the first part has written on the original policies and on the original renewals outstanding providing, however, that the party of the first part will liquidate all his business on or before January 1, 1926.

10

The party of the first part agrees that all records and duplicate of records now used in the business will be left intact with the exception of a ledger of accounts which the party of the first part may consider his property, reserving to the party of the second part the right to make a duplicate of the said ledger.

20

In the event one or more insurance companies refuse to appoint the party of the second part agent, this contract shall be null and void.

IN WITNESS WHEREOF the parties hereto have interchangeably set their hands and seals the day and year first above written.

(Signed) MEYER A. REUBIN (LS)

(Signed) SAMUEL KAUFMAN (LS)

30

Signed, Sealed and  
Delivered in the  
presence of:  
(Signed) C. Raymond Lyons.

40

*Complaint—Exhibit A*

SCHEDULE OF GOODS AND CHATTELS

- 1 rug and all other such equipment that may be on the premises with the exception of a sale and a picture of New Brunswick.
- 10 1 mahogany desk and chair  
 7 office chairs and 1 arm chair  
 1 large desk  
 1 small desk  
 1 typewriter desk  
 1 typewriter chair
- 20 1 Royal typewriter  
 1 adding machine—Victor  
 1 hat rack  
 1 large safe cabinet  
 2 filing cabinets  
 1 atlas

**Exhibit B.**

Kussack and Co.  
 Meyer A. Reubin, Pres.

Insurance	Real Estate	
Underwriters	Brokers	10

30 Harrison Bldg.  
 New Brunswick, N. J.  
 Phone N. B. 4322

Newark Office	New York Office
810 Broad Street	75 Maiden Lane

Peter C. Jensen Inc.	Date June 20, 1927.	
106 Church St.	Terms	20
New Brunswick, N. J.	Broker	

Policy	Company	Date	Description	Rate	Premium	
				of Coverage		
#261865	National	June 16	\$1,000 on office furn. and fix.	\$3.90	\$39.00	
	Res. Ins. Co	1927-30		per \$100.00		30
						\$39.00

Remarks:

**Order to Show Cause.**

*(Filed June 28/1927)*

IN CHANCERY OF NEW JERSEY

10	Between SAMUEL KAUFMAN,  Complainant,  and  MEYER A. REUBIN,  Defendant.	}	On Bill, etc. Order to Show Cause.
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20 On reading and filing the Bill of Complaint and affidavit annexed thereto in the above entitled cause, and, on motion of Paul W. Ewing, Solicitor for and of Counsel with the Complainant:

30 It is on this twenty-eight day of June, 1927, ORDERED, that the defendant, Meyer A. Reubin, show cause before the Chancellor, at the Chancery Chambers, at the State House in the City of Trenton on the fifth day of July, 1927, at ten-thirty o'clock in the forenoon, daylight saving time, or as soon thereafter as counsel can be heard, why an injunction should not issue, according to the prayer of said bill, restraining the defendant, his agents and employees, from engaging in the insurance business, excepting accident and life insurance, and insurance brokered through complainant, within the confines of the State of New Jersey, and for such further relief as may be just.

40 And it is further ORDERED that a copy of the said Bill of Complaint and affidavit and of this

*Meyer A. Reubin*

order, which need not be certified, be served upon the defendant, Meyer A. Reubin, within two days from the date of this Order.

E. R. WALKER,

C. 10

Respectfully advised,

(Signed) Malcolm G. Buchanan,  
V. C.

**AFFIDAVITS IN DEFENSE.**

*(Filed July 15, 1927)*

20

IN CHANCERY OF NEW JERSEY

Between SAMUEL KAUFMAN,  Complainant,  and  MEYER A. REUBIN,  Defendant.	}	On Bill etc. Affidavit.
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30

**Meyer A. Reubin.**

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

Meyer A. Reubin, being duly sworn according to law upon his oath, deposes and says that he is the defendant in the above entitled cause; that the contract marked Exhibit A attached to the 40

*Meyer A. Reubin*

bill of complaint is a true and correct copy of the contract entered into between the complainant and the defendant; that at the time of the sale of the said real estate and insurance business as conducted by deponent at #45 Paterson Street,  
 10 New Brunswick, N. J. he had been previously engaged in this line of business for two and one-half years, during which time he did a local business, namely, New Brunswick, Highland Park and adjoining territory and not beyond two miles of the city limits of any portion of the said City of New Brunswick; that Deponent has no recollection at this time of having written any policies of insurance covering properties in Union County  
 20 or Mercer County; that Somerset County adjoins the City of New Brunswick and it is quite likely that Deponent has written some policies within the vicinity of the City of New Brunswick, which properties may lie in Somerset County; that for a certain cousin living in Philadelphia, deponent did write certain insurance on stock and merchandise and this was due to his relationship with the assured and with that exception at no time has he written any insurance in Philadelphia; that a  
 30 person conducting an insurance business, like one engaged in a professional calling, will at times and on rare occasions be called upon to do business outside of the immediate vicinity where he conducts his office for the transaction of business and this is common to everyone engaged in an insurance business or a professional calling but does not necessarily mean that deponent in the operation of an insurance business, or one  
 40 engaged in a professional calling, has a clientele

*Meyer A. Reubin*

beyond the City—where he conducts and maintains his place of business; that frequently people residing in New Brunswick, or relatives or friends outside of New Brunswick, owning property without the City of New Brunswick, through  
 10 their personal association, would ask to have insurance written on their property, and it does not follow by virtue of this situation, common to every business and professional calling, that deponent in any sense conducted a business or maintained a clientele beyond the City of New Brunswick, Highland Park and immediate vicinity; that it is true an insurance agent has a license to transact business for his company within the  
 20 State, issued by the State Department of Insurance, similar in scope to one possessing a license for the practice of law, medicine, dentistry or any other profession, the license to practice which is under the jurisdiction of the State or a departmental branch thereof; that it is quite true that every insurance agent in every town, city or municipality within the State has on various occasions issued policies covering merchandise or property  
 30 against loss by fire in various sections of the State, but it does not follow that such agent maintains a general practice or business throughout the State any more than one engaged in a profession enjoys an individual clientele beyond the town, city or municipality where he maintains and conducts his place of business, and the insurance business is no exception; that the negative covenant entered into in said agreement, whereby Deponent agreed not to engage in a similar line  
 40 of business within the State of New Jersey is

*Meyer A. Reubin*

greater in its territorial limitations than was necessary for the adequate protection of the complainant in the enjoyment of the goodwill of said business purchased from the defendant, and under the particular circumstances in this case and the nature of the particular contract involved in it, the contract is unreasonable and in restraint of trade for it denies and precludes this defendant from conducting, operating or maintaining an office for the transaction of business as an insurance agent anywhere within the confines of the State of New Jersey, and is void by reason thereof; that at no time prior to the sale of said business did deponent conduct an office outside of the City of New Brunswick or conduct any business or place any insurance outside the territorial limits of the City of New Brunswick, Highland Park, or possibly within two miles of the territorial limits of the City of New Brunswick, that is the rural section of the City of New Brunswick, with possibly the exception of the case above cited where insurance was issued by deponent for his cousin in Philadelphia, and to some other relative and friend who may have owned property beyond the territorial limits referred to.

DEPONENT FURTHER SAYS that at the time of the execution of this agreement it was definitely and specifically predicated upon deponent receiving 5% of the gross business conducted by the vendee from September 1, 1925 to September 1, 1926, which 5% has never been paid, although deponent has repeatedly and frequently made demands therefor; that if deponent may, with the indulgence of this Court refer to the said Exhibit A,

*Meyer A. Reubin*

he directs particular attention to so much of said Exhibit that says:

“As an additional consideration to the party of the first part from the party of the second part it is agreed in consideration of the party of the first part refraining from engaging in the insurance business in the State of New Jersey excepting life and accident insurance for the period of 7 years the party of the first part agrees to pay to the party of the second part 5% commission of the gross insurance business transacted by the party of the second part for 1 year from September 1, 1925, to September 1, 1926, which 5% commission shall be payable semi-annually, March 1st and September 1st.”

DEPONENT FURTHER SAYS that after the agreement was made and entered into, he made demands for this money and the said complainant attempted to pay him on the basis of 5% on net premiums, received at his office, although the language and spirit of the agreement conclusively says that the agreement was predicated upon 5% of the gross premiums and not net premiums.

DEPONENT FURTHER SAYS that it is true as stated in complainant's affidavit that the 5% settlement has not been made covering the insurance business conducted by the complainant for the year commencing September 1, 1925; that so much of said affidavit that refers to a difference of \$500 has relation to a conversation occurring prior to the making of said contract when this defendant

*Meyer A. Reubin*

requested \$9,000 for the business and the complainant offered \$7200.

DEPONENT FURTHER SAYS that upon his return from the State of Florida he called upon Mr. C. Raymond Lyons, the attorney for the complainant who drew the agreement, and the said C. Raymond Lyons supported this defendant in his contention that the 5% commissions on the gross insurance business referred to 5% of the total premiums received by the complainant and not 5% of the net premiums received by the complainant; that as the result of this advice the said complainant became displeased with the position taken by the said C. Raymond Lyons and then consulted another lawyer in the City of New Brunswick by the name of Thomas H. Hagerty; that the said Thomas H. Hagerty, representing the said complainant, stated that he did not concede the correctness of the defendant's contention in relation to the 5% commissions on the gross insurance business, and suggested that deponent institute proceedings at law or in equity to have the question legally determined; that it is true deponent never raised any question about the 5% until after a preliminary statement was rendered wherein the complainant endeavored to credit the defendant with 5% of the net commissions instead of 5% of the gross commissions because prior to that time no contention on this subject matter had arisen and it was only after the submission of the said statement that this question arose and it could not otherwise have arisen except by showing that the parties were

*Meyer A. Reubin*

not in accord as to the interpretation of the clause in the contract above referred to.

DEPONENT FURTHER SAYS that at the time of the closing of this contract in the office of August C. Streitwolf, Mr. C. Raymond Lyons, counsel for the complainant, was present, when it was definitely understood and agreed that the 5% commission on the gross insurance business covered 5% of all premiums received and not 5% of the net premiums received by the complainant; that when deponent purchased this business from Jacob Ratner he entered into a similar covenant in relation to the 5% commission and on the occasion of the closing of this transaction in the presence of Mr. Streitwolf, Mr. C. Raymond Lyons stated, as deponent recalls, that in the transfer of the sale of the insurance business by the Ross agency to Pierce, Drake & Ross (a corporation) a like condition about 5% commissions on the gross insurance business was likewise entered into and that this contract and the reference to the 5% was similar to the one entered into on the Ross agency transfer and that he, C. Raymond Lyons, represented the Ross Agency on the transfer of said business.

DEPONENT FURTHER SAYS that had it not been for the agreement on part of the said complainant to pay 5% commission for the year commencing September 1, 1925, on the gross insurance business transacted by the complainant, he would not have made the contract nor would he have sold the business, nor would he have entered into the negative covenant; that the negative covenant was

*Meyer A. Reubin*

particularly and expressly predicated upon the payment of this 5% gross commission.

DEPONENT FURTHER SAYS that after the agreement was made, he went to the State of Florida and engaged in business where he met with financial reverses due largely to the hurricane storm which occurred there last September, followed by the tremendous fall in values of real estate and had complainant paid the 5% commissions on the gross business conducted by him it would have permitted deponent to remain in Florida and possibly rehabilitate himself; that it was largely on account of the financial reverses and the conditions then existing in Florida that it became necessary for him to leave the State of Florida and resume some sort of employment in the North and being without any substantial funds or means he was forced by reason of these circumstances to re-enter the insurance business and assume the presidency of Kussack & Company, conducting offices in the Harrison Building, in the City of New Brunswick, and at #810 Broad Street, City of Newark, New Jersey where the company is advertised as doing an underwriting insurance business; but at no time since he has been engaged in this business has he or the company diverted any business that was at any time enjoyed by the Reubin-Kaufman Agency, nor by the defendant prior to his sale of the said business to the said complainant, nor would he with knowledge accept any renewal business from the patrons of the Reubin-Kaufman Agency, or from patrons with whom he formally did business, notwithstanding the complainant has failed and refused to pay the

*Meyer A. Reubin*

5% commissions on the gross business conducted by him from September 1, 1925 to September 1, 1926.

DEPONENT FURTHER SAYS that the Reubin-Kaufman Agency, to the best of his knowledge, is doing comparatively a small volume of business in the City of New Brunswick in proportion to the entire fire insurance business placed within said City and that deponent, although identified with Kussack & Company, is in no way injuring or damaging, nor will he injure or damage the said complainant in the operation of said business, nor does Deponent nor Kussack & Company intend to harm or injure the complainant.

DEPONENT FURTHER SAYS that he does not believe the aggregate business of Reubin-Kaufman Agency, at the close of any fiscal year has exceeded the sum of \$35,000 in gross premiums, and that the said business at the time of the sale by Deponent to the complainant approximated about \$28,000 in gross premiums.

DEPONENT FURTHER SAYS that on December 7, 1925 as the records in the office of the Clerk of the County of Middlesex disclose, a company was incorporated by the complainant known as Reubin-Kaufman Inc., since which time the complainant has been doing business under said corporate name and if any damages have resulted from deponent's alleged breach of contract, or will follow therefrom, it will be to the corporation known as the Reubin-Kaufman Inc. and not the complainant; that in the telephone directory covering the City of New Brunswick known as "Sum-

*Meyer A. Reubin*

mer 1927, corrected to May 4, 1927" appears  
 "Reubin & Kaufman Inc. rel. est. ins. 45 Paterson  
 St. New Bruns. 1527" and that the name of the  
 complainant does not appear in connection with  
 the operation of said business nor the firm of  
 10 Reubin & Kaufman, except Reubin & Kaufman  
 Inc. Deponent says in consulting the City Direct-  
 ory of the City of New Brunswick for 1926-1927  
 issued by R. L. Polk & Company the following  
 appears "Reubin-Kaufman Inc. (Meyer A. Reu-  
 bin, Samuel S. Kaufman) Real Estate and Insur-  
 ance, 45 Paterson, Phone 1527" and in no way  
 does it appear that Reubin & Kaufman is a  
 co-partnership, or Reubin & Kaufman by Samuel  
 20 Kaufman, registered trade owner.

DEPONENT FURTHER SAYS that on all policies is-  
 sued by the complainant in the operation of his  
 business there have been affixed labels reading  
 "Reubin & Kaufman Inc. 45 Paterson St. New  
 Brunswick, N. J. Phone 1527."

DEPONENT FURTHER SAYS that the use of the  
 name of "Reubin" permitted under contract, Ex-  
 30 hibit A, was granted for the purpose of showing  
 or informing the public that the business formerly  
 conducted by the defendant was now operated and  
 conducted by the complainant and not for the pur-  
 pose of showing that the defendant was identified  
 or affiliated with any corporation organized as  
 Reubin & Kaufman Inc. although this is not as  
 misleading and deceptive as the use of the name  
 Reubin & Kaufman, which gives the public the  
 impression that the complainant and defendant  
 40 are copartners and by virtue thereof has caused

*Meyer A. Reubin*

this deponent considerable embarrassment at  
 various times; that notwithstanding the said name  
 of Reubin & Kaufman may be registered as a  
 tradename its use in the manner aforesaid is de-  
 ceptive because it leads the public to believe that  
 Deponent is a co-partner with the complainant 10  
 and consequently liable for all obligations of a co-  
 partner and responsible for all acts of a co-  
 partner, which was not the intent nor the spirit of  
 the agreement when this deponent consented to  
 the use of the name Reubin in connection with the  
 said business; deponent further says that the use  
 of the name Reubin in connection with said busi-  
 ness was for the purpose of informing the public  
 that the business heretofore possessed and en- 20  
 joyed by the defendant was now transferred to  
 the complainant and that the complainant con-  
 tinued the same as the successor in interest and  
 not for the purpose of using the name in a co-  
 partnership relation.

MEYER A. REUBIN.

Sworn and subscribed before me  
 this 8th day of July, 1927.

Helen C. Barnwell,  
 Notary Public of N. J.

30

40

**C. Raymond Lyons.**

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

10 C. Raymond Lyons, being duly sworn according to law, upon his oath, deposes and says that he is a Counsellor at Law of the State of New Jersey, engaged in the practice thereof in the City of New Brunswick, Middlesex County; that he was a counsel for Samuel Kaufman on the 21st day of August 1925, being the occasion of the entering into of a certain agreement between the said Samuel Kaufman and Meyer A. Reubin, marked "Exhibit A" attached to the bill of complaint herein; that preceding the drawing of said agreement there were many conferences as a result of which the agreement was drawn by Deponent and submitted to August C. Streitwolf, counsel for Meyer A. Reubin, and executed at the office of August C. Streitwolf, on the date it bears date; that prior to and at the time of the entering into of the said contract it was definitely understood and agreed between the said Samuel Kaufman and Meyer A. Reubin, Mr. Streitwolf representing Meyer A. Reubin, and Deponent representing Samuel Kaufman that commencing September 1, 1925 and for a period of one year thereafter the said Samuel Kaufman would pay to Meyer A. Reubin 5% commission on the gross insurance placed through the office of the said Samuel Kaufman;

40 DEPONENT FURTHER SAYS he distinctly recalls that on the occasion of the aforesaid closing he informed Mr. Kaufman that in a similar transaction wherein he represented the Ross Agency which was sold to Pierce, Drake & Ross (a cor-

*C. Raymond Lyons*

poration) that a 5% commission on the gross insurance business was agreed to covering a definite period and that the exaction by Mr. Reubin of this 5% commission on the gross business was not an unusual condition.

10 DEPONENT FURTHER SAYS that at a period since Mr. Reubin returned from Miami, Florida, and within the last eight months past, he recalls Mr. Reubin calling upon him when a conference was had pertaining to the clause in relation to the 5% commission on gross business on which occasion Deponent advised Mr. Kaufman that there was no question or uncertainty as to what was intended and agreed to, and that Mr. Kaufman was obligated to Mr. Reubin for 5% commissions on the gross insurance premiums placed through his office and not 5% of the net premiums received by Mr. Kaufman for such business as was placed through his office; that the said Mr. Kaufman took exception to such advice and as Deponent is informed and verily believes consulted other counsel being displeased with the advice rendered to him by Deponent.

C. RAYMOND LYONS. 30

Sworn and subscribed before me this  
 8th day of July, 1927.  
 Harry L. Ivins,  
 Attorney at Law of N. J.

**Peter M. Kroeger.**

IN CHANCERY OF NEW JERSEY

10	Between, SAMUEL KAUFMAN,  and MEYER A. REUBIN,	}	Complainant,  Defendant.	Affidavit.
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State of New Jersey, }  
 County of Middlesex. } ss:

20 Peter M. Kroeger, being duly sworn according to law upon his oath deposes and says that he is engaged in the insurance business in the City of New Brunswick, Middlesex County, New Jersey; that he is agent for three Fire Insurance Companies in the City of New Brunswick and holds a State license as such agent issued by the Department of Insurance; deponent says that he is not uncommon for an insurance broker in any locality to occasionally be called upon to write insurance in a town, city or municipality within the State many miles distant from his place of business, due to circumstances such as the assured living in said city and owning insurable property outside the city where the agent conducts business, or due to personal friendship or relationship with the assured that it is possible for an agent in the operation of his insurance business, at various times and under certain circumstances as

40 related, to issue a policy against loss by fire cov-

*Peter M. Kroeger*

ering insurable property located without and beyond the town, city or municipality wherein he maintains an office for the transaction of business; that such a circumstance does not mean that the agent in any sense is conducting a state-wide business, but is merely a special circumstance incident to the operation of an insurance business the same as a lawyer, dentist, doctor or civil engineer may be called upon to render services for a client who is not a resident of the place where the practitioner is maintaining an office for the transaction of business. 10

DEPONENT FURTHER SAYS that his business is in the City of New Brunswick and he would under no circumstance think he was conducting business beyond the City of New Brunswick although he might frequently and occasionally be called upon to write insurance in various localities within the State of New Jersey. 20

DEPONENT FURTHER SAYS that he does not know the defendant herein and was only casually introduced to the complainant a few days ago and has no interest in the contention of subject matter between the complainant and defendant. 30

PETER M. KROEGER.

Sworn and subscribed before me this  
 7th day of July, 1927.  
 Helen C. Barnwell,  
 Notary Public of N. J.

**COMPLAINANT'S ADDITIONAL AFFIDAVITS.**

*(Filed July 15/1927)*

IN CHANCERY OF NEW JERSEY

10	SAMUEL KAUFMAN, <div style="text-align: right; padding-right: 20px;">Complainant,</div> <div style="text-align: center; padding: 5px 0;">vs.</div> MEYER A. REUBIN, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	On Bill etc. Additional Affidavit
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**Samuel Kaufman.**

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

Samuel Kaufman being duly sworn according to law on his oath, deposes and says:

1. Prior to the purchase by me from the defendant Meyer A. Reubin of the insurance business as set forth in the bill of complaint filed in this cause, and prior to the drafting of the agreement in which was incorporated the bill of sale for said business, I had examined the insurance books of said Meyer A. Reubin and found that in addition to what might be termed as local business, that is, the insurance of properties, real and personal in the City of New Brunswick and its immediate vicinity, he had been writing policies on properties in Union County, Mercer County and Somerset County and on properties in other parts of the State of New Jersey where I did not know

*Samuel Kaufman*

in what counties they were situate, and also there appeared record of insurance written on automobile in New York City and stock or merchandise in a store in Philadelphia, Pennsylvania.

The renewals under the terms of our agreement for all of these policies as well as policies which I am calling local business, were to go to me, so far as he was able to control same and the consideration which I paid to him was based upon an estimate of the value of the business, considering the amount of same and the territory in which he had been doing business.

2. In my affidavit annexed to the bill of complaint in this cause, a general statement is made in relation to my paying to him, the said Meyer A. Reubin, all of the moneys called for by the agreement, and it should be explained that while I paid to him the \$1000.00 in said agreement first mentioned and about a week later the \$4000.00 secondly mentioned and have paid to him partly in advance of their due dates, the \$2250.00 secured by the eight notes mentioned in the agreement, there has not been a settlement in cash in relation to the five per cent of my insurance business for the year beginning September 1st, 1925 to September 1st, 1926.

When Mr. Reubin and I were talking over the terms upon which I was to purchase his insurance business, there was a difference between us of \$500.00, and I said to him, that if the business was really worth what he claimed it to be, we would leave the cash consideration as subsequently set out in the agreement, but that in addition, I would

*Samuel Kaufman*

pay him five per cent of what I made during the first year.

Insurance agents receive their profits or compensation by a division of the premium paid by customers on their policies, agents receiving a certain percentage of same as agreed upon with their respective companies and turning over the premium less this percentage deduction to the companies.

When we were discussing this matter of five per cent of my profits for the first year, Mr. Reubin asked me if I intended to deduct my office expenses, and I said no, there would be no such deduction, but that he should receive five per cent of my share of these premiums without such deduction, and to make it plain that my office expenses and no other expenses of that character were to be deducted, the word "gross" was used, but the idea of paying five per cent to him of the whole premiums paid by customers, which would have included five per cent of the moneys due the several insurance companies, was never suggested or intended.

Payment of this five per cent had been made by me according to my interpretation of the contract by crediting Mr. Reubin with the amounts due me from insurance written for him, the amount of which exceeded the amount due from me. He never raised any question as to the amount upon which the five per centum should be estimated until after such statement was rendered, and then claimed that I should have credited him with five per cent on all of the insurance premiums and

*Samuel Kaufman*

not upon my share or interest in same. I reminded him of the conversation and of what I considered was our definite understanding at the time the agreement was being framed, and told him I wished the matter determined and that if he was not satisfied with my statement, that I wished he would take proceedings to have the question legally determined. This he has never done, but I understand that he has or contemplates raising this question as a defense in this present suit brought to restrain him from conducting an insurance business, contrary to the terms of the agreement under which it was transferred to me and on which he has been paid the purchase price as above set forth.

3. Life and accident insurance business was expressly reserved by the said Meyer A. Reubin and in addition thereto, the agreement provides for his writing of all other classes of insurance as a broker, through my office as agent, so that the said Meyer A. Reubin is not, by the terms of the agreement restrained from the insurance business, so far as life insurance and accident insurance is concerned, nor is he restrained from any other class of insurance, except as to the manner in which he is to conduct same, which under the terms of his agreement, was to be as a broker, through my agency and not as an independent agent and this class of business, as well as the life and accident business and the business, which according to his books he had written for New York State and Pennsylvania, he is privileged to carry on and conduct.

*Samuel Kaufman*

4. The agreement above mentioned contained a clause to the effect that I may use the name "Reubin" in connection with the said business for a period of seven years, and I at one time contemplated forming a corporation, using the names Reubin and Kaufman, and filed a certificate for such incorporation, but finding that I would have to be personally liable, so far as any business accommodation was concerned and I would have the trouble and expense of issuing stock certificates and complying with the corporation laws, including the laws relating to income taxes, I abandoned the idea and instead, filed a trade name certificate, showing that I was carrying on the business as an individual under the name of Reubin-Kaufman. I am the sole owner of the business and would have been the sole owner of the corporation business, holding all of the stock thereof, except qualifying shares for the other two directors.

SAMUEL KAUFMAN.

Sworn and subscribed before me this

5th day of July, 1927.

30 Florence L. Belting,  
Notary Public,  
(L. S.) New Jersey.

**James A. O'Connell.**

## IN CHANCERY OF NEW JERSEY

SAMUEL KAUFMAN,

Complainant,

vs.

MEYER A. REUBIN,

Defendant.

On Bill etc.

10

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

James A. O'Connell being duly sworn according to law on his oath, deposes and says: 20

1. I am now and for about eighteen years past have been actively engaged in the insurance business, with an office in the City of New Brunswick, State of New Jersey. From the carrying on of such business for myself and from coming in contact with other insurance agents, I know it is the custom of agents in this state to write insurance, not only on property in municipality where their offices are, but also on properties in other parts of the state wherever they are able to secure the business. 30

2. Agents under their licenses from the state department, are authorized to write policies on property anywhere in the state, and the only control or limitation is such as some of the insurance companies prescribe by their own rules to avoid conflicts between their different agents, and when this is the case, the rules are directed prin- 40

James A. O'Connell

ipally to the matter of fees rather than the forbidding of the taking care of such business.

10 3. While my own office is in the City of New Brunswick, I write insurance practically throughout the whole state and this is true with other agents who conduct an extensive business, or have connections in different parts of the state, through which business is secured.

20 4. The insurance business, so far as the agent is concerned and the good will of such a business might be said to be entirely personal. Many people do not know the name of the company in which they are insured, but they do know the agent from whom they received their insurance policy and this fact, coupled with the possession of renewal or expiration list outside of a well known address or place of business, constitutes the stock in trade of the insurance agent and is an asset, the value of which depends upon the extent of his business.

JAMES A. O'CONNELL.

30 Sworn and subscribed before me this 5th day of July, 1927.  
Lillian Anderson,  
Notary Public of New Jersey.

Order for Temporary Restraint.

(Filed July 18/1927)

IN CHANCERY OF NEW JERSEY  
64-537

10 Between, }  
SAMUEL KAUFMAN, } On Bill etc.  
Complainant, } Order for  
and } Temporary  
MEYER A. REUBIN, } Restraint  
Defendant. }

20 This matter being opened to the Court by Paul W. Ewing, solicitor for and of counsel with complainant, and August C. Streitwolf, solicitor for and of counsel with the defendant, and the affidavits of the complainant having been read and considered, and the affidavits of the defendant having been read and considered, and the arguments of respective counsel having been heard;

30 It is on this fifteenth day of July, 1927, ORDERED that the said defendant, Meyer A. Reubin, be and he is hereby restrained *pendente lite* until the further order of this Court, from engaging directly or indirectly in the insurance business within the State of New Jersey, except when such insurance is brokered or written through complainant; and excepting, however, the writing or engaging in the business of life or accident insurance.

E. R. WALKER, 40  
C.

Respectfully advised,  
Malcolm G. Buchanan,  
V. C.



*Petition of Appeal*

your petitioner appeals from that part of the order of the Chancellor which orders as aforesaid, upon the ground that the same is erroneous, for that—

- 10 1. The restraint or temporary injunction against your petitioner from engaging directly or indirectly in the insurance business within the State of New Jersey is erroneous because the restraint is greater in its territorial extent than is necessary to properly protect the complainant, and likewise should not have been granted because the said complainant had not performed all the covenants agreed by him to be performed.
- 20 2. That the contract of sale referred to in the bill of complaint and in which the defendant entered into a negative covenant to refrain from engaging in the business referred to within the State of New Jersey, for a period of seven years thereafter was greater in its territorial extent than was necessary to properly protect the complainant and was in restraint of trade and unenforceable and void.
- 30 3. That the contract referred to in the complaint had an interdependent covenant whereby the complainant agreed to pay the defendant 5% commissions on the gross insurance business transacted by the said complainant for one year from September 1, 1925 to September 1, 1926, which 5% commissions were agreed to be paid semi-annually thereafter, to wit: March 1, 1926 and September 1, 1926, and the failure of said complainant to perform this covenant was such a
- 40 breach of the entire contract that the restraint

*Answer to Petition of Appeal*

against this defendant should not have been issued.

YOUR PETITIONER therefore prays that the said order of the Chancellor may be, in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem just and agreeable to equity. 10

Dated Sept. 13, 1927.

AUGUST C. STREITWOLF,  
Sol'r for and of Counsel with Appellant.

20

**Answer to Petition of Appeal.**

(Filed Sept. 28/1927)

NEW JERSEY COURT OF ERRORS AND  
APPEALS

SAMUEL KAUFMAN,

Complainant-Appellee,

vs.

MEYER A. REUBIN,

Defendant-Appellant.

30

On Appeal  
from the  
Court of  
Chancery.

The answer of Samuel Kaufman, the above named appellee, to the petition of appeal of Meyer A. Reubin, the above named appellant. 40

*Answer to Petition of Appeal*

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that an order was, on the 15th day of July, 1927, made and entered in the Court of Chancery of  
 10 New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order, this appellee begs leave to refer thereto when the same shall be produced.

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

PAUL W. EWING,  
 Solicitor for and of Counsel  
 with Appellee.

41  
41 FEB.T.1928

**New Jersey  
 Court of Errors and Appeals**

Between

SAMUEL KAUFMAN,

Complainant-Appellee,

and

MEYER A. REUBIN,

Defendant-Appellant.

**BRIEF ON BEHALF OF DEFEND-  
 ANT-APPELLANT.**

This is an appeal by the defendant from an order of the Court of Chancery, advised by the Honorable Malcolm G. Buchanan, Vice Chancellor, dated July 15, 1927, restraining the defendant *pendente lite*, from engaging directly or indirectly in the insurance business within the State of New Jersey, except when such insurance is brokered or written through the complainant, and excepting, however, the writing or engaging in the business of life or accident insurance (pp. 37 to 42, inc.).

### Statement of Facts.

On August 21, 1925, complainant purchased of the defendant an insurance business previously conducted by the defendant in the City of New Brunswick, N. J. (Ex. A, p. 6). The consideration for the sale involved two elements: (1) the payment of \$7,250 (p. 7), and (2) the payment of five per cent commission, by the complainant to the purchaser, of the gross insurance business transacted by the complainant for one year from September 1, 1925, to September 1, 1926, payable semi-annually, March 1st and September 1st (p. 9). In the bill of sale (Ex. A, p. 6) the defendant agreed that he would not directly or indirectly, or by means of servants, agents or employees, write any risk of insurance other than life or accident insurance, on persons or property situated in the State of New Jersey, for a period of seven years, unless such business was brokered to the complainant. Following the recital of the negative covenant in the bill of sale, appears a distinct paragraph providing that as an additional consideration to the defendant from the complainant it is agreed, in consideration of the defendant refraining from engaging in the insurance business in the State of New Jersey, except life and accident insurance, for the period of seven years, the complainant agrees to pay the defendant five per cent commissions of the gross insurance business transacted by the complainant for one year from September 1, 1925, to September 1, 1926, which five per cent commissions shall be payable semi-annually March 1st and Sept. 1st (Ex. A, p. 9, Fols. 20-30).

On June 28, 1927, the complainant filed his bill of complaint against the defendant in the Court of Chancery, charging a violation of the negative

covenant entered into as specified, and charging that the defendant, individually and likewise as president of Kussack & Company, a corporation, was writing insurance, with offices in New Brunswick, N. J., in contravention of said agreement (p. 2, fols. 10-40). An order to show cause why an injunction *pendente lite* was procured on the day of the filing of the bill, and upon the hearing thereof, it appears, from the affidavits of file and uncontradicted:

That Exhibit A (p. 6) contains all the recitals of the bill of sale; that the complainant was the president of Kussack & Company, a corporation, conducting an insurance business (which was part of its business) with offices at New Brunswick, N. J., and at Newark, N. J.; that the five per cent commission of the gross insurance business transacted by the complainant for one year from September 1st, 1925, to September 1, 1926, and payable March 1st (1926) and September 1st (1926) was not paid. The complainant endeavored in his reply affidavit (p. 31, fols. 10-40 and p. 32, fols. 1 to 40) to excuse the non-payment of it by placing a construction or interpretation of the contract differently than appears in the bill of sale, but his personal interpretation of the wording and meaning of this clear language is refuted by his former counsel who drew it (p. 27, fols. 10-30).

Upon conclusion of the argument of the order to show cause before the Hon. Malcolm G. Buchanan, Vice Chancellor, he wrote no opinion, but stated that the case at bar was identical with the precedents laid down and established in the case of *Sarco Co. of N. J. v. Gulliver* (129 Atl. Rep. p. 399) and advised the order entered on July 15, 1927, from which the defendant now appeals to this court.

**POINT I.**

**A restraint should not be imposed greater in its territorial limitations than is necessary for the adequate protection of the complainant in the enjoyment of the good will of the business purchased from the defendant.**

This principle, I believe to be the fundamental law of this State, without exception.

Taylor Iron & Steel Co. v. Nichols,  
*et als.*, 73 N. J. Eq. 684;  
Sternberg v. O'Brien, 48 N. J. Eq. 370;  
Albright v. Teas, 37 N. J. Equity 171;  
Mandeville v. Herman, 42 N. J. Eq.  
185;  
Trenton Potteries v. Oliphant, 58 N. J.  
Eq. 507;  
Artistic Porcelain Co. v. Boch, 76 N. J.  
Eq. 533;  
Wyder v. Milhomme, 96 N. J. Law 500.

By the provision of the negative covenant in the bill of sale, the defendant agreed to refrain from engaging in the insurance business in the State of New Jersey for seven years.

By the terms of the order appealed from, the defendant is restrained from engaging in the insurance business within the State of New Jersey.

By the proof before the Court, the defendant alleged:

“That at the time of the sale of the said real estate and insurance business, as conducted by deponent at No. 45 Paterson Street, New Brunswick, N. J., he had been previously engaged in this line of business for two and one-half years, during which

time he did a local business, namely, New Brunswick, Highland Park and adjoining territory and not beyond two miles of the city limits of any portion of the said City of New Brunswick. \* \* \* That a person conducting an insurance business, like one engaged in a professional calling, will at times and on rare occasions, be called upon to do business outside of the immediate vicinity where he conducts his office for the transaction of business and this is common to everyone engaged in an insurance business or a professional calling but does not necessarily mean that deponent, in the operation of an insurance business, or one engaged in a professional calling, has a clientele beyond the city where he conducts and maintains his place of business; \* \* \* that he does not believe the aggregate business of Reubin-Kaufman Agency, at the close of any fiscal year, has exceeded the sum of \$35,000 in gross premiums, and that the said business at the time of the sale by deponent to the complainant approximated about \$28,000 in gross premiums” (pp. 17, 18 and 23).

The complainant replied to these averments as follows:

“Prior to the drafting of the agreement in which was incorporated the bill of sale for said business, I had examined the insurance books of said Meyer A. Reubin and found that in addition to what might be termed as local business, that is, the insurance of properties, real and personal in the City of New Brunswick, and its immediate vicinity, he had been writing policies on properties in Union County, Mercer County and Somerset County and on properties in other parts of the State of New Jersey, where I did not know in what counties they were situate, and also there ap-

pears record of insurance written on automobile in New York City and stock or merchandise in a store in Philadelphia, Pennsylvania" (pp. 31 and 32).

It is manifest from this proof that the restraint in this case was greater than was necessary to protect the complainant, for it cannot be said that on an aggregate of \$28,000 gross premiums per year, the complainant was doing a business extending throughout the State of New Jersey, nor is there any proof that any business was ever written in Essex County, although at the time of granting the order the defendant was transacting a business in the City of Newark, County of Essex.

In the case of *Cosmos Dyeing & Printing Works v. Calderini*, 91 N. J. Eq. page 391, Vice Chancellor Lewis held, as a rule of law:

"There is no doubt that this court should go as far as possible to restrain a fraudulent act by the vendor in violation of his covenant, but the restraint must be reasonable, and the words of the contract carefully construed. Moreover, the rule in New Jersey is plainly established that where the complainant's right is uncertain as a matter of law, a preliminary injunction will be denied. The true intent and meaning of the contract herein is a question of law, particularly when the covenant is one which may be in restraint of trade."

The negative covenant in the case at bar is clearly void under the decisions of this State and that of the Federal Courts, as in restraint of trade, being far greater in its application than was reasonably necessary to protect the complainant in the good will of the business he purchased.

## POINT II.

**An interdependent covenant by a vendee, in the contract or bill of sale, requires performance before vendor should be restrained for violating his negative covenant.**

This doctrine is invoked upon the equitable maxim "he who seeks equity must do equity," and the failure of the complainant to pay or account for the five per cent commissions of the gross business transacted by him for one year after transfer, payable semi-annually, should deny complainant equitable aid, particularly when such payment was specifically referred to as part of the consideration for the negative covenant.

Assuming as an illustration point, installment payments as a consideration for the sale, deferred extending over a period of time, and are not paid as they mature, this court certainly would not restrain the vendor from violating his negative covenant when it is specifically recited that such payments are made a consideration for the negative covenant; this illustration is analogous to the case at bar.

The case of *Sarco Co. of N. J. v. Gulliver* (129 Atl. Rept. p. 339) is not analogous to the case at bar and the learned Vice Chancellor erred when he so held, for the following reasons:

In the *Sarco* case all the covenants on the part of the vendee were not interdependent, nor were any of them based, upon moneys or sums required to be paid by the vendee to the vendor, for the Court held:

"Moreover, the defense could not avail as against the restrictive covenant, for the two covenants are not interdependent."

in the case at bar the defendant exercised every precaution in requiring the payment of five per cent commissions on the gross business to be interdependent with his negative covenant, when it was specifically provided in said contract that as an additional consideration to the defendant refraining from engaging in the insurance business in the State of New Jersey, except life and accident insurance, for the period of seven years, the complainant agreed to pay the defendant five per cent commissions of the gross insurance business transacted by the complainant for one year from September 1, 1925, to September 1, 1926, which five per cent commissions shall be payable semi-annually, March 1st and September 1st.

The application of the maxim that he who seeks equity must do equity is not limited to any particular class of cases, but may be applied whenever it is necessary to the promotion of justice (*Mutual Life Ins. Co. v. Brown*, 30 N. J. Eq. 193; also *Bourgeois v. Risby R. E. Co.*, 82 N. J. Eq. p. 211).

### POINT III.

#### **The case of Sarco Co. of N. J. v. Gulliver is easily distinguishable from the case at bar.**

The *Sarco* case was decided on precedents well established by this court and there was no interdependent covenant forming part of the consideration for the negative covenant except that an effort was made on the part of the defendant in the *Sarco* case to establish "that the complainant had not performed the contract on its part, in that it did not turn over to the defendant promptly the moneys due her and had not furnished her with the required furniture or a suitable office within which to work." In respect to this defense, the Court held that the evidence was entirely lacking in support of the allegations as to the moneys and the furniture. That in respect to the failure to set up a suitable office, the defendant had been in the use of this office for approximately two years before any claim was made that it was not suitable, and the Court said it was unable to find that it was not a suitable office under the contract. The Court further held:

"Moreover, the defense could not avail as against the restrictive covenant, for the two covenants are not interdependent."

It is further easy to distinguish the *Sarco* case from the case at bar because in the latter case the payment of the five per cent commissions on the gross business was interdependent by virtue of the expressed language used in the contract, wherein it was made a part of the consideration for the negative covenant.

The question whether covenants are dependent or independent was discussed by the Chancellor in the case of *Coursen v. Canfield*, 21 N. J. Eq. page 92.

Respectfully submitted,

AUGUST C. STREITWOLF,  
Sol'r for and of Counsel with  
Defendant-Appellant.

41 41 FEB.T. 1928  
Be.

## New Jersey Court of Errors and Appeals

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BETWEEN,  
SAMUEL KAUFMAN,  
Complainant-Appellee,  
and  
MEYER A. REUBIN,  
Defendant-Appellant.

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### **BRIEF ON BEHALF OF COMPLAIN- ANT-APPELLEE.**

This is an appeal from an order of the Court of Chancery, granting a preliminary injunction restraining the defendant until further order of the Court from engaging directly or indirectly in the insurance business within the State of New Jersey, except when such insurance is brokered or written through the complainant, and excepting, however, the writing or engaging in the business of life or accident insurance (S. C. p. 37).

### **Statement of Facts.**

On August 21, 1925, complainant purchased of the defendant an insurance business previously conducted by the defendant in the City of New Brunswick, N. J. (Exhibit A, p. 6). The consid-

eration for the sale was the sum of \$7,250.00 (S. C. p. 7). In the bill of sale (Exhibit A, p. 9) the defendant agreed that he would not directly or indirectly or by means of servants, agents or employees, write any risk of insurance on persons or property situated in the State of New Jersey for a period of seven years, unless such insurance was brokered or written through the complainant, and excepting, however, the writing or engaging in the business of life or accident insurance. The bill of sale contains three separate and distinct paragraphs respecting the negative covenant not to engage in the insurance business in competition with the complainant, excepting the insurance business hereinbefore mentioned. In one of the paragraphs of the bill of sale, respecting the covenant of the defendant not to engage in the insurance business in competition with the complainant, there is a recital of an additional consideration to be paid to the defendant in the sum of 5% commission on the gross insurance business transacted by the complainant for one year, from September 1, 1925, to September 1, 1926 (Exhibit A, p. 9, fols. 20-30).

It is admitted by the defendant that since the sale of his business to complainant, he has re-engaged in the general insurance business and defendant attempts to justify his action on the ground that the negative covenant entered into by him is greater in its territorial limitations than was necessary for the adequate protection of the complainant in the enjoyment of the good will of the business purchased by complainant; and on the further ground that complainant has failed to pay to defendant the 5% commission on the gross

business transacted by complainant for the period from September 1, 1925, to September 1, 1926 (Exhibit A, pp. 17 and 18). The proofs on the part of the complainant show that he paid the cash consideration called for in the agreement and that he has paid to the defendant the 5% commission on the gross insurance business transacted by him for the period from September 1, 1925, to September 1, 1926 (S. C. pp. 31 and 32, fols. 20-40 and fols. 10-40).

Upon conclusion of the argument of the order to show cause before the Hon. Malcolm G. Buchanan, Vice Chancellor, he wrote no opinion, but held that the negative covenant was not greater in territorial extent than was reasonably necessary for the adequate protection of the complainant in the enjoyment of the good will of the business and predicated his opinion in this respect upon the principle of law, enunciated in the case of *Sarco Co. of New Jersey v. Gulliver*, 99 N. J. E. 943, 129 At. Rep. 399.

**POINT I.**

**The restraint imposed upon the defendant is not greater in its territorial limitations than is reasonably necessary for the adequate protection of the complainant in the enjoyment of the good will of the business purchased from the defendant.**

The temporary restraint advised by the Vice Chancellor in this cause, restrained the defendant *pendente lite*, from engaging directly or indirectly in the insurance business within the State of New Jersey, excepting when such insurance business is brokered or written through the complainant, and excepting, however, the writing of life or accident insurance.

Contracts in partial restraint of trade have been held valid by the Courts of this State, unless the contract is objectionable to public policy in going further than is reasonably necessary for the protection and enjoyment of the business in whose interest it is made, or, unless the restraint is so great as to interfere with the interest of the public. *Trenton Potteries Co. v. Oliphant*, 58 N. J. Eq. 507, 43 At. Rep. 723, *Fleckenstein Bros. v. Fleckenstein*, 76 N. J. Law, 613, 71 At. Rep. 265, *Wyder, et als. v. Milhomme*, 115 At. Rep. 380.

The proof before the Court as to the extent of the business acquired by complainant was as follows:

“Prior to the purchase by me from the defendant Meyer A. Reubin of the insurance business as set forth in the bill of complaint filed in this cause, and prior to the

drafting of the agreement in which was incorporated the bill of sale for said business, I had examined the insurance books of said Meyer A. Reubin and found that in addition to what might be termed as local business, that is, the insurance of properties, real and personal in the City of New Brunswick and its immediate vicinity, he had been writing policies on properties in Union County, Mercer County and Somerset County and on properties in other parts of the State of New Jersey where I did not know in what counties they were situated, and also there appeared record of insurance written on automobile in New York City and stock or merchandise in a store in Philadelphia, Pennsylvania” (S. C. pp. 30 and 31).

That the defendant did not deny this is evident by a careful reading of his affidavit, particularly the following:

“\* \* \* That deponent has no recollection at this time of having written any policies of insurance covering properties in Union County or Mercer County; that Somerset County adjoins the City of New Brunswick and it is quite likely that deponent has written some policies within the vicinity of the City of New Brunswick, which properties may lie in Somerset County; that for a certain cousin living in Philadelphia, deponent did write certain insurance on stock and merchandise and this was due to his relationship with the assured and with that exception at no time has he written any insurance in Philadelphia. \* \* \*”

It is respectfully submitted that on the proofs before the Court, the contention of the defendant, that the restraint imposed was greater in terri-

torial limitations than was reasonably necessary for the protection of complainant in the enjoyment of the business and good will purchased of the defendant, is disproved.

In examining the negative covenant under consideration, however, it will be seen that the defendant is not restricted from engaging in the insurance business in the State of New Jersey, provided such business is written or brokered through the complainant. This feature of the contract is somewhat analogous to the contract under consideration in the case of *Sarco Co. v. Gulliver*, 129 At. Rep. 399, wherein at page 402, Vice Chancellor Buchanan held:

“Defendant, under the terms of the contract, is not compelled to work for complainant. She is prevented for five years from working in competition with complainant, but may, if she chose, do work during that time and receive the same pay as theretofore; the only difference being that she provide her own typewriter and her own room to typewrite. These differences are obviously not great, and, on the other hand, she need only work when and so long as she desires. In this particularly, the negative covenant is far less exacting on defendant than the majority of such covenants which usually prohibit all work in competition in a certain district and for a certain time.”

The negative covenant here does not prohibit the defendant from engaging in a business for which he is fitted by training and experience and does not therefore, deprive the public of his usefulness in the capacity in question. As was pointed out by Vice Chancellor Buchanan in the

case of *Sarco Co. v. Gulliver*, *supra*, the negative covenant under consideration is far less exacting than the majority of such covenants. The defendant herein, as has been previously pointed out is not precluded from engaging in the insurance business in the restricted territory, the only limitation placed upon him being that if he does desire to re-engage in the insurance business, such business must be written or brokered through the complainant.

To allow this defendant to violate the terms of the contract entered into with the complainant after receiving a valuable consideration therefor, would be aiding this defendant in consummating a fraudulent scheme. This proposition is tersely stated by Chief Justice Gummere in *Fleckenstein Bros. v. George Fleckenstein*, 76 N. J. Law, 613, 71 At. Rep. 265—

“And it seems to me that when a vendor endeavors to steal from his vendee the business which he has sold, having in his pocket the moneys which was paid to him for it, Courts should be diligent in the endeavor to find a way to prevent the consummation of so fraudulent a scheme.”

The negative covenant under consideration is valid and does not impose upon the defendant an unreasonable restraint.

**POINT II.**

**The construction of a written instrument is a matter of law for the Court.**

It may not be amiss at this time to say that I do not agree with the statement in my adversary's brief, as to the learned Vice Chancellor disposing of the defense raised, respecting the question of payment of the 5% commission on the gross insurance business on the principles of law laid down by him in the case of *Sarco Co. v. Gulliver, supra*. As the learned Vice Chancellor wrote no opinion in this case, it may be that he so held, but my recollection of the matter is that the learned Vice Chancellor in applying the precedents laid down and established in the case of *Sarco Co. v. Gulliver, supra*, did so only as to the defendant's contention as to the unreasonableness of the negative covenant.

I believe the law to be firmly established in this State that the construction of a written instrument is a matter of law for the Court. *Bockian v. United Candy Co.*, 91 N. J. L. 114, 102 At. Rep. 393; *Hope v. The Maccabees*, 91 N. J. L. 147, 102 At. Rep. 688.

The learned Vice Chancellor found as a fact on the proof before him that complainant had performed his part of the agreement in the payment of the 5% commission on the gross insurance business for the period from September 1, 1925, to September 1, 1926. Gross business as distinguished from gross premiums means the total revenue received by an agent, after turning over to the companies he represents their percentage

of the premium. The construction contended for by the defendant would obviously change the plain meaning of the words employed, from gross business to gross premiums. Defendant does not deny that he received the 5% commission according to the above interpretation of the terms—"5% commission on the gross insurance business" (S. C. p. 20, fols. 29-40, p. 32, fols. 30-40).

"The gross earnings of a business or company are the total receipts before deducting expenditures" (*Black's Law Dictionary*, p. 402).

It must also be borne in mind that the restraint imposed upon the defendant is a temporary one until final hearing. The ground upon which the Court acts in ordering such interim restraint is the preservation of the property, the preservation of the *status quo*, and the prevention of irreparable injury. *McCran v. Western Union Telegraph Co.*, 94 N. J. Eq. 281.

Irreparable injury is injury which is material and which cannot adequately be assessed in damages. It is quite evident that complainant will suffer irreparable injury by defendant setting up a competitive business.

Possibly on final hearing when the entire proof will be before the Court, the defendant's contention may be found to be correct. The temporary restraint, however, should not be disturbed on the reasons advanced by the defendant.

Respectfully submitted,

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with Complainant-Appellee.