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**Notice of Appeal.**

Filed December 4, 1927.

IN CHANCERY OF NEW JERSEY.

Between

EYPPER & BECKMANN, INC., a  
corporation of the State of  
New Jersey,

*Complainant,*

and

EDGAR ROSS,

*Defendant.*

(62-314)

On Bill, etc.

Notice of Appeal.

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The defendant, Edgar Ross, hereby appeals from  
the order made in the above entitled cause on  
November 14, 1927, and advised by Vice-Chancel-  
lor John Bentley, and dismissing the order to show  
cause obtained by said defendant for the setting  
aside of the sale of real property in said cause and  
the ordering of a resale thereof. The defendant  
appeals from the whole and every part of the said  
order, to the Court of Errors and Appeals in the  
Last Resort in All Causes.

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Dated, December 2, 1927.

PERKINS & DREWEN,  
Solicitors for and of Counsel  
with Defendant, Edgar Ross.

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

PERKINS & DREWEN,  
Of Counsel with Defendant,  
Edgar Ross.

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Notice of Appeal.

Filed December 4, 1927.

IN CHANCERY OF NEW JERSEY.

10	Between EYPPER & BECKMANN, INC., a corporation of the State of New Jersey, <p style="text-align: right;"><i>Complainant,</i></p> and EDGAR ROSS, <p style="text-align: right;"><i>Defendant.</i></p>	(62-314) On Bill, etc. Notice of Appeal.
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20 The defendant Edgar Ross hereby appeals from the order made in the above entitled cause on November 14, 1927, and advised by John Bentley, V. C., ordering the payment by this defendant to the complainant of a deficiency under the sale of real estate had in this cause. The defendant Edgar Ross appeals from the whole and every part of the said order to the Court of Errors and Appeals in the Last Resort in All Causes.

30 Dated, December 2, 1927.

PERKINS & DREWEN,  
Solicitors for and of Counsel  
with Defendant, Edgar Ross.

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

40 PERKINS & DREWEN,  
Of Counsel with Defendant,  
Edgar Ross.

Petition of Appeal.

Filed December 14, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between EYPPER & BECKMANN, INC., a corporation of the State of New Jersey, <p style="text-align: right;"><i>Complainant-Appellee,</i></p> and EDGAR ROSS, <p style="text-align: right;"><i>Defendant-Appellant.</i></p>	On Appeal from the Court of Chan- cery. Petition of Appeal.
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20 To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Edgar Ross, the appellant in the above entitled cause, respectfully shows:

1. Petitioner finds himself aggrieved by a certain order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, advised by Hon. John Bentley, Vice-Chancellor, bearing date the 14th day of November, 1927, in a certain cause in said Court of Chancery wherein the said Eypper & Beckmann, Inc., was complainant, and the said Edgar Ross was defendant, in this respect, to wit, that the said order adjudges that the said Edgar Ross pay to the said Eypper & Beckmann, Inc., the sum of \$72,317.96, together with interest thereon from July 13th, 1927, being the deficiency arising on the sale of lands and premises mentioned in the said order.

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*Petition of Appeal.*

10 2. And petitioner appeals from the order of the  
 Chancellor which decrees as aforesaid, upon the  
 ground that the same is erroneous, and that the  
 said Court should have adjudged that the said  
 Edgar Ross be not required to pay to the said  
 Eypper & Beckmann, Inc., any sum of money what-  
 ever by reason of any deficiency arising on the sale  
 of the lands and premises as aforesaid, and should  
 have adjudged also that the said sale should be  
 set aside and for nothing holden, and a new sale  
 of the said lands and premises be held.

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

PERKINS & DREWEN,  
 Solicitors for and of Counsel with Appellant.

**Answer to Petition of Appeal.**

Filed January 12, 1928.

30 (Answer to petition of appeal duly filed in com-  
 mon form.)

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**Complainant-Appellee's Petition for Order  
Directing Payment of Deficiency.**

Filed October 14, 1927.

IN CHANCERY OF NEW JERSEY.

EYPPER & BECKMANN, INC., a New Jersey corporation, <i>Complainant,</i> vs. EDGAR ROSS, <i>Defendant.</i>	}	10       Petition for Order Directing Payment of Deficiency.
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To the Honorable Edwin Robert Walker, Chancel-  
 lor of the State of New Jersey: 20

The petition of Eypper & Beckmann, Inc., a New  
 Jersey Corporation, having its principal office in  
 the Borough of Fort Lee, in the County of Bergen,  
 and State of New Jersey, respectfully shows that:

1. Petitioner is the complainant in the bill of  
 complaint herein, which was filed to enforce the  
 specific performance of a certain contract entered  
 into by the complainant and the defendant, Edgar  
 Ross, for the sale by said complainant to said de- 30  
 fendant of certain lands and premises in said bill  
 of complaint, particularly described.

2. Such proceedings were had in this cause that  
 on May 16th, 1927, an order was made by this  
 Court directing that a lien be impressed upon said  
 lands and premises for the sums hereinafter men-  
 tioned and the said lands and premises be sold at  
 public vendue under the direction of Walter G.  
 Winne, Esquire, one of the Special Masters of this 40  
 Court, to raise and satisfy the sums of \$93,983.41

*Complainant-Appellee's Petition for Order Directing Payment of Deficiency.*

together with interest thereon from April 4th, 1927 and \$578.36 together with interest thereon from April 4th, 1927, and the costs and expenses of said sale.

10 3. It was further ordered in and by said order that if the said defendant, Edgar Ross, should not pay to petitioner the cost of proceedings to obtain the said order to be taxed, the said costs also be included in the amount to be raised at said sale. The said costs were taxed at \$524.66 and the said defendant has not paid the same.

20 4. True copies of said order and of said taxed costs were duly served on the said defendant as in and by said order directed as appears by the proof of said service filed herein.

30 5. The said Special Master has duly filed his report of said sale which has been duly confirmed by this court by which report it appears that the said lands and premises were duly sold by said Special Master as in and by said order directed, that the amount realized at said sale was \$25,000 less the sum of \$671.26 costs of said sale which is insufficient to pay the sums directed to be raised and satisfied as aforesaid and that a deficiency remains of \$72,317.96 with interest thereon from July 13th, 1927.

40 Petitioner therefore prays that the said defendant, Edgar Ross, may be ordered and directed to pay to the said petitioner the said sum of \$72,317.96 together with interest as aforesaid and the costs of these proceedings to be taxed.

CLARENCE MABIE,  
Solicitor and of Counsel with Petitioner.

*Complainant-Appellee's Petition for Order Directing Payment of Deficiency.*

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

WILLIAM J. EYPPER, of full age, being duly sworn according to law on his oath deposes and says: 10

1. I am the President of the petitioner in the foregoing petition named and the matters and things therein contained are true.

2. On May 16th, 1927, an order was made by the Court of Chancery of New Jersey, directing that a lien be impressed upon the lands and premises for the sums in the foregoing petition mentioned and that the lands and premises be sold at public vendue under the direction of Walter G. Winne, Esquire, one of the Special Masters of this court to raise and satisfy said sums with interest thereon from April 4th, 1927 and the costs and expenses of said sale. 20

3. That said petitioner has been subjected to costs in the sum of \$524.66 upon the proceedings to obtain said order which costs have not been paid by the said defendant. 30

4. That copies of said order and of said taxed costs were duly served on said defendant as in and by said order directed, the proof thereof being filed in said cause by the solicitor and counsel of the complainant to the best of my knowledge and belief.

5. The sale of said lands and premises was held July 13th, 1927, as in and by said order directed and the amount realized at said sale was \$25,000 40

*Complainant-Appellee's Petition for Order Directing Payment of Deficiency.*

less the sum of \$671.26 costs of said sale, which is insufficient to pay said sums directed to be raised and satisfied as aforesaid and a deficiency remains of \$72,317.96 together with interest thereon from July 13th, 1927.

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WILLIAM J. EYPPER.

Sworn and subscribed before me  
this 14th day of October, 1927.

JOSEPHINE DICKINSON,  
Notary Public of N. J.

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**Complainant-Appellee's Affidavits on Application for Order Directing Payment of Deficiency.**

Filed October 14, 1927.

IN CHANCERY OF NEW JERSEY.

Between

EYPPER & BECKMANN, INC.,  
a New Jersey corporation,  
*Complainant,*

and

EDGAR ROSS,  
*Defendant.*

On Bill, etc.  
Affidavits on Rule  
to Show Cause.

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

GEORGE H. BECKMANN, of full age being duly sworn according to law on his oath, deposes and says:

I am Secretary and Treasurer of the complainant, Eypper & Beckmann, Inc., a New Jersey corporation, and which company is the owner of property described in the bill of complaint for specific performance filed in this cause. A suit for such performance was based upon a contract dated May 18th, 1926, between the complainant and defendant for the sale of the land therein described, title thereto to be passed on July 18th, 1926, for which a deed was entered on October 18th, 1926. Under the provisions of said contract \$18,170 was to be paid on the signing of the contract, but a check for \$5,000 of this sum was not honored at the bank and is in the possession of the company at the present

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*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

time still unpaid. This left the total amount of payment on account of the contract the sum of \$13,000, which has been credited on account of the balance due by the defendant to the complainant.

10 The contract was not consummated, as provided, upon many excuses offered by the defendant, the complainant attending several times through its officers and agents for the purpose of closing title and carrying out the provisions of the contract. This condition continued until November 10th, 1926, when a bill of complaint upon specific performance was filed by Clarence Mabie, solicitor of the complainant in this court.

20 Upon the filing of such bill of complaint, an attempt was made to file an answer which was stricken out as sham and frivolous and thereupon on February 10th, 1927, a decree pro confesso and order for proofs ex parte was entered in this cause, by virtue of which depositions were taken on February 23rd, 1927, before a Master in Chancery to ascertain the amount due the complainant by the defendant and to determine details as a basis for a final decree.

30 In these depositions a credit is given for cash paid on account of said contract in the sum of \$13,000 and a final decree in behalf of the complainant and against the defendant was entered March 3rd, 1927, disclosing the sum of \$93,983.41, together with the taxed costs of this suit under the terms of said order, impressed as a lien against said lands and premises in favor of the complainant, and directing a sale to satisfy such lien, subject to a mortgage lien of \$98,800, and that in case a deficiency should arise upon such sale, the said  
40 defendant be ordered by this Court to pay such deficiency, together with the costs of suit to be taxed.

*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

Upon the entry of this order, no attention was paid by the defendant to the requirements of the decree, and notice was served upon said defendant that an application would be made to this Court to satisfy such lien, and that said lands would be sold at public vendue for such satisfaction, together with the costs and expenses of such proceedings and of said sale. No one appeared before the court upon the return day of the notice and an order was entered upon the petition for sale of lands to satisfy lien on May 16th, 1927, by the Honorable Vivian M. Lewis, Vice Chancellor, whereby the matter was referred to Walter G. Winne, one of the Special Masters of this court to sell and dispose of the property for the purposes herein set forth. 10

Promises were made again by the defendant Ross in this cause, to finance the purchase undertaken by him, to assume first mortgages of \$98,800, a lien upon the property, and to pay the balance of \$58,494.08 in cash and to give a second mortgage of \$35,489.33, but no promise ever made by him was kept, and there were many. 20

This condition continued down to the day of sale, when an application was made to our solicitor, Clarence Mabie, for an adjournment of one week, which he refused. Upon the day of sale, notice of which was duly given by Walter G. Winne, Special Master as aforesaid, there appeared Mr. John J. Mulvaney, a lawyer associated with Mr. Milton in the practice of law in Jersey City, New Jersey, together with the defendant, Ross, personally, who requested an adjournment of one week. Our solicitor objected to this on the grounds set forth in this affidavit and for the reasons set forth 30 40

*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

10 in the affidavit of Walter G. Winne, filed herein, and Mr. Ross stated and his solicitor stated for him that if this week's adjournment were given no further applications for time would be asked, Mr. Mulvaney stating he was sure that if the contract could not be financed by the following Monday, the sale being adjourned until the Wednesday thereafter, that he felt sure it could not be financed at all. The sale was therefore adjourned until July 13th, 1927, at 2. P. M. Daylight Saving Time, at the Sheriff's Office, Hackensack, New Jersey, at which time neither Mr. Edgar Ross the defendant, nor anyone representing him as solicitor or counsel appeared.

20 In the meantime, we discussed the possibility of obtaining as many persons to attend the public sale as could be done, because we feared that we would be compelled to take this property, and so stated to various persons who discussed the sale with us by telephone. In these telephone conversations we urged them to attend the sale and stated that if we were compelled to take the property at public sale that we would be glad to enter into negotiations for the turn of it. In our conferences, in which Mr. Eypper, the President of the complainant, and I both took part, with Mr. Mabie, we asked if there was any legal objection to the issuance of circulars to realtors throughout Hudson and Bergen Counties in addition to the advertising required by statute. Mr. Mabie said, "no", and we therefore had printed a circular in an effort to have attend as many buyers or prospective buyers at the sale as we were able to bring. This circular

30 was under the letterhead of the complainant and invited the attention of realtors, speculators and investors to the great possibilities of the tract of

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*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

land described in the notice of sale. This notice of sale was a copy of the one sent to the newspapers in which the statutory notice of sale was given by Walter G. Winne, Special Master, and called attention to the public sale.

10 A copy of the circular letter is attached hereto and made part of this affidavit. An advertising slip was enclosed with each circular letter, which was a copy of that which was attached to the statutory proof of advertising, and posting by Mr. Winne as Special Master. Full notice therefore was given to everyone who received a circular of the date of sale fixed by the Special Master.

20 In addition to the circulars which I sent out in behalf of a public sale and giving notice of the sale, we advertised in a New York City paper in the substance of our circular letter, and for this extra advertising and circularizing stationery, posting, etc., the complainant expended personally about \$500. This was made in an effort in good faith to obtain bidders at a public sale, but with the results as stated to this court.

30 Every effort was made on the part of deponent and those associated with him in his company, to obtain a buyer, and deponent asserts that there was a buyer present on the day advertised for the sale, but who refused to have anything to do with the sale after it was adjourned for one week, stating that his client did not care to enter in a sale for the purchase of property respecting which there might be delay, and that his client had other plans for the investment of his funds.

40 No one appeared at the adjourned sale July 13th, 1927, and the complainant was forced to purchase the property subject to the liens thereon in the sum

*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

10 of \$98,800 with accrued interest, taxes, etc., for the sum of \$25,000 which sum was the highest and best price the same would then bring in cash. A report of sale was thereupon filed by the Special Master in the cause, and duly confirmed, but a petition was thereupon filed for a rule to show cause why an order should not issue and the property be re-sold.

This case was argued before the Court of Chancery and the court declared that it could see no good reason to set aside the sale and re-sell, and an order was accordingly entered for the dismissal of the rule.

20 The complainant in this case, upon the sale as aforesaid, offered it for all bidders and the defendant ignored the sale, and now appears before the court upon an application, as I am firmly convinced, to avoid his obligations as the result of a heavy speculation.

30 It was stated at the time of the application for the adjournment before Mr. Winne, Special Master, that there was a possibility of interesting some buyer, but no name was mentioned, and such name was refused to be given upon request being made for definite information by our solicitor.

40 The petition before the court now, insubstance, declares by the depositions attached to the rule, that the statement was made "that several men would be in position to bid at this sale and realize the best price the property could bring and requested an adjournment of the sale." Nothing ever came of this hope, the words quoted being in the affidavit of the defendant, Edgar Ross and attached to his application for an order on rule to show cause.

*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

Deponent further says that Mr. Winne did not refuse to further adjourn the sale, but the defendant agreed with his attorney to abandon an attempt to sell if it could not be done in the week's adjournment and stated almost verbatim that "if we can't arrange to bring about a sale by next Monday we shan't be able to handle it at all." Deponent further says: I never said to telephone callers who showed an interest in the purchase of this property that they could make terms with my company, the complainant. I did tell them that we could not sell without the consent of Mr. Ross and I certainly thought and hoped that there would be other buyers there and that would let us out, because we had no desire to take this property and assume an obligation of mortgage encumbrances of approximately \$100,000.00.

The defendant in this cause insisted that the property was worth much more than the amount contracted for with my company. We had mimeograph maps made for him and were willing to attempt to sell for his account at \$2,650 an acre, but we could find no buyers and the defendant was equally unsuccessful.

30 Deponent further says, that at no time has he ever done anything, or his company, or the officers thereof done anything that would prevent the competitive bidding for the property, that the sale was advertised properly and that the defendant had every concession made to him that equity and human consideration could offer.

The petition filed now before the court declares that the conduct of deponent's company is "inequitable and unlawful" and has "discouraged competition". This deponent submits that he and

*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

10 his associates made every effort to obtain bidders and to have the widest competition. In the affidavit of Edgar Ross he states that "for reasons unknown to myself, the complainant was unable to obtain perfect title to the lands until sometime in October, 1926". This was not so, but we postponed the closing upon promises made almost weekly until patience ceased to be a virtue and we filed a bill for specific performance with the effect and condition as set forth in this affidavit at the present time.

20 The defendant states further that through his solicitor he stated that he "had several men who would be in a position to bid at this sale and realize the best price the property could bring and requested an adjournment of the sale". No one ever appeared and it is reasonable to believe that if the defendant had anyone who could bid and would bid that they would have appeared at the sale or entered into some negotiations with deponent's company thereafter.

30 Deponent further says that he has never refused to give the fullest information to every person who communicated with him with respect to the sale of the property in question, and that he never stated to anyone that he could buy the property cheaper from deponent's company than they could from the defendant.

40 Deponent further says that no price was mentioned for the sale of the property in question in the circular letter which was posted, but that reference was made to property in the general locality of the premises in question urging purchase for future profit.

In the affidavit of Mr. Cahill, he states that he

*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

10 saw the advertisement of sale two weeks before the first published date of sale and that he telephoned to the defendant that he "had in mind a buyer who would in all likelihood be interested in the purchase of the property" and that for that reason he called this deponent, as stated in his affidavit, to request an adjournment, and that deponent refused to grant such an adjournment. In a subsequent paragraph of this deposition, the deponent, Cahill states that "I had a buyer for the property and that I needed a little more time in which to work on him," and that he requested an adjournment of two weeks. Cahill states in his deposition that deponent refused to consider any request for an adjournment. I never stated to said Cahill that if he had a prospect he could do much better by dealing with Eypper & Beckmann for the property than he could with Ross. This is an utter misrepresentation of any statement that I ever had with any one. There has never been submitted to deponent or to his associates since the date of the contract May 18th, 1926, an offer of purchase, with the exception of two offers that were made about two weeks after we had entered into this contract at the same price for which the defendant agreed to purchase. There are no assurances before this court in any form to indicate a definite and specific offer for the purchase of the property in question, and the litigation and procedure has consisted of many delays, adjournments and broken promises and abstract assurances of something that might be done.

40 Since the purchase of the property by complainant at public sale on July 13th, 1927, it has been compelled to carry the overhead at a great burden which a contract of this character with the sum

*Complainant-Appellee's Affidavits on Application for Order Directing Payment of Deficiency.*

involved entails, and the complainant is desirous of moving the property.

There was entered in the record of this cause the following amounts:

10	Principal .....	\$93,983.41	
	Interest from April 4, 1927 to July 13th, 1927 at 6%, 3 mo. 9 days .....	1,550.73	
		\$95,534.14	

The costs as taxed with interest amount to ..... \$ 587.90

20	Further taxed costs made a part of the indebtedness and obligation of the defendant amount to .....	524.66	1,112.56
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So that the total amount due as the basis of the present application for an order to pay a deficiency is the sum of \$96,646.70

Subject to the following credits:

	Sale price .....	\$25,000.00	
	Less costs of sale, Master's commissions, etc. ....	671.26	24,328.74
30	Deficiency .....	\$72,317.96	

with interest thereon from July 13th, 1927.

Deponent therefore respectfully prays that the petition for a re-sale of the property in question may be dismissed, with costs against the defendant.

GEORGE H. BECKMANN.

40 Sworn and subscribed to before me this 2nd day of November, 1927.

WARREN C. BANTA,  
Notary Public of N. J.

*Complainant-Appellee's Affidavits on Application for Order Directing Payment of Deficiency.*

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

WILLIAM J. EYPPER, of full age being duly sworn according to law on his oath deposes and says:

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I am the President of Eypper & Beckmann, Inc., the complainant in the above entitled cause and have read the affidavit of Mr. George H. Beckmann who is the present Secretary and Treasurer and who has been Secretary and Treasurer for several years.

All of the statements made by Mr. Beckmann in that affidavit are true with the exception that I was not present at some of the telephone conversations, but received telephone conversations myself with respect to the property in question and urged that anyone in interest attend the sale for the purpose of buying it at the public sale where there would be competition and possibly a better price offered. I have never stated to any person telephoning our office or talked with anyone interested in this property or written to anyone about it and stated orally or in writing that the property could be purchased from the complainant at a better value than the defendant if they waited as the complainant might have to bid it in.

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The company was compelled, eventually, to bid it in for the reasons stated in Mr. Beckmann's affidavit and I was present at the Court House on the day that the application for an adjournment was made and also present on the day of sale and am personally acquainted with all of the facts stated by Mr. Beckmann other than his personal telephone calls in my absence. We spent about \$500 for individual advertising in a general way to bring

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*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

bidders to the public sale, enclosing slips of the sale signed by the Special Master in Chancery, Walter G. Winne, with each circular letter that we sent out and advertised, in addition in papers in the City of New York.

10 I know personally, that there was a bidder interested and in attendance on the advertised day of sale, but the adjournment prevented his bid and he refused therefore to indicate any interest in the property for the reason as I have it that his plans were for the investment of his money in some other business. I understood also, that there was one bidder at the public sale from the City of New York in response to our personal advertisement in one of the papers in the City of New York, but that he also refused to attend on the adjourned date of sale, and that therefore, these possible bidders were lost.

20 There were sent to us by our solicitor, probably 100 slips of the newspaper advertisement signed by Walter G. Winne, Special Master, and these slips are the ones that were enclosed with the circular letters that were sent to people that we thought might be interested in the purchase of the property, the greater number of them being realtors and professional buyers. Nothing has ever been done by deponent or those associated with him or by this complainant in this cause, to prevent competitive bidding and the statement in the rule to show cause that the conduct of the complainant is inequitable and unlawful is not true. Nothing was ever done to discourage competitive bidding. The fact that the sum of \$500 was expended for the purpose of circularizing this public sale and which circular letter contained a slip signed by the Spe-

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*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

cial Master describing the property in question and giving a specific date of sale would seem to refute any allegation of this character in the petition of the defendant or in the depositions accompanying the petition.

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WILLIAM J. EYPPER.

Sworn and subscribed to before me  
this 2nd day of November, 1927.

WARREN C. BANTA,  
Notary Public of N. J.

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Office Phone Cliffside 167  
Cliffside 168

Member of  
Real Estate Board  
of the Palisades

Real Estate

Insurance

Mortgage Loans

Builders

30

EYPPER & BECKMANN, INC.

REALTORS

825 Palisade Ave.

Palisade, New Jersey.

Dear Sir:

We invite the attention of realtors, speculators and investors to the great possibilities of the tract of land described in the enclosed notice of sale.

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*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

10 Here is an unusual opportunity: CLIFF PROPERTY OVERLOOKING THE HUDSON TO BE HAD AT LAST YEAR'S PRICES—600 FEET FRONTAGE ON THE PALISADES, 1,200 FEET ON EACH SIDE OF THE NEWLY COMPLETED STATE BOULEVARD AND 600 FEET ON EACH SIDE OF SYLVAN AVENUE.

This tract of ninety acres lies between the property of Dr. Paterno which adjoins on the North and the Interstate Park which is on the South. It can be stated positively that Dr. Paterno paid approximately \$4,000 per acre for his tract of about one hundred acres and that he is holding same at the price of \$8,000 per acre.

20 The total of the liens against this property, including, the first mortgages of \$98,800 and interest to date of sale is about \$197,000, which is not quite \$2,200 per acre. The cash required is less than one-third—approximately \$65,000. The \$98,800 first mortgage is divided to cover on said property in two separate tracts, one being in the amount of \$50,000 on part of the lands and the other for \$48,800 on part. The said first mortgages will not mature until September 15th, 1931, and contain liberal release clauses.

Very truly yours,

EYPPER & BECKMANN, INC.,  
G. H. BECKMANN,  
Secretary.

"Headquarters for Bergen County Acreage"

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*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

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

JOHN M. CONTANT, of full age, being duly sworn according to law on his oath deposes and says:

I am a resident of the County of Bergen and by profession a realtor in which business I have been engaged for the past twenty years. I have bought and sold property throughout the County of Bergen both for my personal profit and for clients. 10

I am acquainted with property described in the bill of complaint in the above entitled cause being approximately 98 acres in the Borough of Alpine, which property was contracted, as I understand it, to be sold to the defendant Edgar Ross. 20

I received a circular letter from Eypper & Beckmann, Inc. referring to a sale of the premises in question, and with this circular letter was enclosed a slip of the sale of the property signed by Walter G. Winne, Special Master, such sale to be held on July 6th, 1927. I became interested professionally in the sale of the property in question for a client and attended at the sale, as I expected would take place on the date advertised July 6th, 1927, for the purpose of making a bid in good faith for the premises in question. I knew that the property was encumbered with approximately \$100,000 in mortgages and that there was due perhaps, as I had the figures, another \$90,000 upon the contract. I was prepared with the client in question, to bid and to take title. 30

Upon this day, July 6th, 1927, an application was made by the defendant, Ross, as I was told who was represented by some attorney, for an adjournment of one week. This request was opposed by Mr. Mabie who represented the complainant, 40

*Complainant-Appellee's Affidavits on Application for Order Directing Payment of Deficiency.*

but the Special Master, Mr. Winne, eventually granted the adjournment.

10 I communicated this fact to my client and he stated that he did not care to enter into a procedure in which there was a possibility of litigation, and that he proposed to use his funds which had been available for the purchase of this property in another direction and for investment of other securities I believe or other real property, I am not sure which. I was unable to interest this bidder thereafter upon his refusal to permit me to act for him and abandoned interest in the property from that time. This occurred during the week of the adjournment.

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JOHN M. CONTANT.

Sworn and subscribed to before me  
this 2nd day of November, 1927.

JOSEPHINE DICKINSON,  
Notary Public of N. J.

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

WALTER G. WINNE, of full age, being duly sworn according to law on his oath deposes and says:

40 I am a Special Master of the Court of Chancery of New Jersey. By virtue of a decree in the above entitled cause dated May 16th, 1927, I was directed to sell the lands referred to in the petition of Edgar Ross herein at public sale and pursuant thereto advertised that I would sell said lands at the Sheriff's Office in accordance with the statute and

*Complainant-Appellee's Affidavits on Application for Order Directing Payment of Deficiency.*

also posted such notice in accordance with the statute at the Sheriff's Office, Hackensack, New Jersey, on July 6th, 1927, at 2 P. M. Daylight Saving Time.

10 On the morning of July 6th, 1927, I received a telephone call from Mr. John Milton, a lawyer of my acquaintance, in Jersey City, New Jersey, requesting that one week's adjournment of said sale be granted by me to his client, Edgar Ross, the petitioner. I conferred with Mr. Clarence Mabie, solicitor of complainant and telephoned to Mr. Milton that I was unable to grant such an adjournment by consent of the solicitor of record and that the matter would have to be discussed when the property was cried for sale. Mr. Milton said that if a sale were held against the protest of Edgar Ross, it probably would not be confirmed by the Court of Chancery, and that if an adjournment of one week were granted no further adjournment would be asked for and he agreed to be present or represented at the sale on behalf of Edgar Ross.

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At the time appointed, 2 P. M. Daylight Saving Time, July 6th, 1927, at the Sheriff's Office, Hackensack, New Jersey, I offered to sell the premises in question pursuant to the aforesaid decree and order directing me, and Mr. John J. Mulvaney, a lawyer associated with Mr. Milton in the practice of law, appeared with Mr. Edgar Ross, the petitioner herein, and requested an adjournment of three weeks. I stated that the discussion with Mr. Milton was for one week only and in conference Mr. Ross, the defendant, or petitioner on this rule, and Mr. Mulvaney agreed that this was correct. Mr. Ross stated publicly and Mr. Mulvaney acquiesced that if an adjournment of one week were granted no more adjournments would be re-

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*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

10 requested and that they expected to be able to finance a bid for the property in one week's time. I am sure that I did not say that further adjournments at the request of the defendant, Edgar Ross, would absolutely not be granted as stated in the affidavit by him accompanying the petition on this rule on page "2" but that what I did say probably was that they should be present on the adjourned day to protect their interests.

I asked if there were other bidders present and Mr. John M. Contant and a Mr. John Baldwin, both real estate brokers in this County, arose and stated that they were present ready to bid and that they did not know whether they would be in a position to bid after a week's delay.

20 Clarence Mabie, solicitor for the complainant, objected to any adjournments stated that the petitioner, Edgar Ross, had interposed every possible defense, all of which were stricken out as sham and frivolous and that he tendered a check which was not honored by the bank on which it was drawn; that he had made repeated promises which he had failed to keep and that Clarence Mabie did not believe that he was or would be in a position to make a bona fide bid for the property and asked Mr. Ross to state the manner in which he expected to finance such a bid. This Ross refused to do and thereupon I adjourned the sale until July 13th, 1927, at 2 P. M. Daylight Saving Time at the Sheriff's Office, Hackensack, New Jersey.

30 From July 6th, 1927 to July 13th, 1927, I heard nothing from Edgar Ross or any one representing him. On this latter date I offered the property for sale and Mr. Ross was not present nor was any one present representing him. The complainant

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*Complainant-Appellee's Affidavits on Application  
for Order Directing Payment of Deficiency.*

was the only bidder for the property and bid \$25,000 subject to mortgage liens in the sum of \$98,800 with lawful interest thereon, a copy of which slip of sale is attached hereto, and I declared the property sold to the complainant for that sum of money and so reported to the Court of Chancery of New Jersey.

10 Since the sale I have heard nothing from Ross or his representatives except a communication from Mr. John Milton, under date of July 15th, 1927, in which he wrote me

"I am sorry that Ross did not make good. I feared he would not."

WALTER G. WINNE.

Sworn and subscribed to before me  
this 3rd day of November, 1927.

JOSEPHINE DICKINSON,  
Notary Public of N. J.

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*Defendant-Appellant's Petition for Order to Show Cause.*

paid by your petitioner leaves an amount of \$68,983.41, from which your petitioner as defendant in this cause would be subject under a personal deficiency judgment.

10 Since the date of the sale herein, petitioner has discovered that divers interested real estate brokers communicated with and made personal visits to the office of the complainant corporation whereat they talked with one George Beckmann, an officer of the complainant corporation. The said Beckmann was reluctant to supply the interested brokers with any information concerning the property. He advised them to wait until the sale was held as he, the said Beckmann, was sure that  
20 the defendant would not be able to take the property and the complainant corporation would have to take it back.

Your petitioner further shows that since the date of the sale, he has discovered that the said George Beckmann stated to a Mr. William M. Cahill, Jr., and Harry R. Ray, real estate brokers, who had communications with the said Beckmann, that the defendant had paid about \$2,350 per acre, and that after the sale to complainant, they, the said Cahill and Ray, could in all likelihood buy the property  
30 from complainant for the sum of \$2,200.00 per acre. The said Beckmann stated further that the complainant could sell the lands cheaper to Cahill or Ray than they could buy the property from the defendant. This for the reason that complainant would be protected by a personal deficiency judgment against the defendant.

40 Petitioner further shows that since the date of sale, he has discovered that the complainant corporation caused circular letters to be written on its letterhead and signed by one of its officers and

*Defendant-Appellant's Petition for Order to Show Cause.*

to be sent to all the real estate brokers in Bergen County. In these circular letters, the complainant offered the property involved in this suit to interested parties at a price of \$2,200 per acre. The said circular letters were written by the complainant corporation and received by the brokers previous to the first advertised date of sale herein. 10

Petitioner further shows that by means of the inequitable and unlawful conduct of complainant, the said brokers discouraged to enter into competitive bidding absented themselves from the sale and the complainant thereby secured to itself the property at the price of \$123,000.00.

Petitioner further shows that heretofore, he filed petition in this cause setting forth among other things that the price realized at the sale was grossly inadequate and unjust, and an order to show cause was issued by this Court requiring the complainant to show cause why the said sale should not be set aside and a new sale had. 20

Upon the return of said order to show cause, the merits thereof and the law and facts involved, were argued before this Honorable Court by the solicitors of defendant. Upon the said argument first heard and considered, an order was made and entered thereafter, wherein and whereby it was ordered that the order to show cause made herein be dismissed. 30

Your petitioner further shows that he has been served by the solicitors of the complainant with a Notice of Motion of the application of the complainant to this Court for an order directing payment of all the deficiency which arose at the sale of the lands contracted to be sold to defendant. 40

Wherefore, your petitioner prays that the said

*Defendant-Appellant's Petition for Order to Show Cause.*

sale may be opened and set aside, and an order made for the resale of the said lands and premises at public vendue, on a date to be fixed at the discretion of the Court.

10 And your petitioner does hereby tender himself ready to pay all of the expenses of the printing, advertising and other charges incidental to the holding of the sale herein on the 13th day of July, 1927, as herein above stated.

20 And your petitioner further prays that this Honorable Court make an order requiring the complainant to show cause before it, on a date to be fixed by the Court, why they and each of them and their solicitors, agents and representatives, should not be forthwith restrained and enjoined from in anywise collecting or attempting to collect, realizing or attempting to realize any amount on account of the deficiency arising at the sale of the said premises against petitioner or in anywise further pursuing or instituting any action, suit, cause or motion or other proceedings for the purpose of, or calculating to result in the realizing or collection of the deficiency realized at the sale of the lands and premises, and why the said complainants, their  
30 solicitors, agents, and representatives and each of them should not be forthwith enjoined and restrained from so doing until the further order or decree of this Court in the premises.

Respectfully,

PERKINS & DREWEN,  
Solicitors for Petitioner.

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**Defendant-Appellant's Affidavits on Order to Show Cause.**

Filed November 7, 1927.

IN CHANCERY OF NEW JERSEY.

Between  
EYPPER & BECKMANN, INC.,  
a corporation of New Jersey,  
Complainant,  
and  
EDGAR ROSS,  
Defendant. } On Bill, etc.  
Affidavit. 10

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

EDGAR ROSS, of full age, being duly sworn according to law on his oath deposes and says:

I am the petitioner in the foregoing petition named. I have fully read the said petition and all the matters and things set forth therein are true to the best of my knowledge, information and belief.

I entered into a written contract with the complainant for the purchase of certain lands described in the bill of complaint, situate in Bergen County, which said contract was dated May 8th, 1926. By said contract it was provided that I was to pay the sum of \$181,000.00. The tract of land consisted of 80 acres for which I was to pay the sum upwards of \$2,300.00 per acre, but the exact amount of acreage was contingent upon what would be disclosed by an accurate survey of the lands. The said lands were surveyed and it was found that they contained over 87½ acres for which I was to 40

*Defendant-Appellant's Affidavits on Order to Show Cause.*

pay the sum of \$205,783.41. The title to said lands was to be taken on July 18, 1926.

10 The complainant for reasons unknown to myself was unable to obtain perfect title to the lands until some time in October, 1926, and subsequently there-  
to and about November, 1926, a bill for specific performance was filed in this Court at the suit of the complainant.

20 Previous to the first advertised date of sale, I had made every effort to interest some real estate brokers and individuals in the purchase of the property and shortly before the 6th day of July, the first advertised date of sale, I had succeeded in interesting several prospects in the said lands and with this in mind and in company with John J. Mulvaney, a Counsellor at Law of the State of New Jersey, I appeared at the Sheriff's office in Hackensack on July 6th, 1927, and in my presence, Mr. Mulvaney stated to the Special Master, conducting the sale that I had several men who would be in a position to bid at this sale and realize the best price the property could bring, and requested an adjournment of the sale. The request for ad-  
30 journalment was strenuously objected to by attorneys for complainant, but over such objections, Mr. Winne, the Special Master designated by the Court to make the sale, adjourned the sale for one week, and gave us clearly to understand that the sale would take place on the 13th day of July, and that further adjournments at the request of the deponent would absolutely not be granted.

40 Deponent further says that on the 13th day of July, 1927, he had not succeeded in interesting his prospects in the property to the extent that they would then be willing to enter into a project to buy

*Defendant-Appellant's Affidavits on Order to Show Cause.*

the property, and further realizing the absolute refusal of Mr. Winne to further adjourn the sale, deponent absented himself from the sale on the adjourned date.

10 And it is especially true that on the first advertised date of sale and in my presence, Walter G. Winne, the Special Master, ordered to make the sale of the premises herein, gave it to be understood to myself and John J. Mulvaney, the attorney representing me at the sale, that no further ad-  
journalments would be made at the request of the defendant and that the sale would absolutely take place on the 13th day of July, then next.

20 Deponent is informed that on the 13th day of July, 1927, the said lands in the bill described were sold to the complainant corporation upon a bid of \$25,000, subject to the mortgage liens in the sum of \$98,800 with lawful interest and taxes making a purchase price to complainant of \$123,800 and a deficiency judgment against deponent making an amount upwards of \$68,000.00.

30 Deponent has been informed that a Mr. Cahill and Mr. Ray, who are known to deponent, made inquiries over the telephone and personally called upon Mr. Beckmann, an officer of the complainant corporation for the purpose of getting information for men who they were endeavoring then to sell the property to and interest in the sale of the property.

40 Deponent is further informed that Mr. Beckmann advised the said Cahill and Ray that they could buy the property cheaper from the complainant than they could from deponent, as they would surely have to buy the property in at the sale and take it back to themselves, and that after the sale to them, the said Cahill and Ray could bring their

*Defendant-Appellant's Affidavits on Order to Show Cause.*

prospects to the office of the complainant corporation and enter into negotiations with them for the purchase of the property.

10 Deponent further says that he is informed that real estate brokers in the County of Bergen and elsewhere received through the mail and previous to the first advertised date of sale a circular letter on the letterhead of Eypper & Beckmann, Inc., the complainant herein, an offer to sell the property involved herein at a figure between \$2,000 and \$2,200 per acre.

20 Deponent further says that the effect of these statements made by Mr. Beckmann, one of the officers of the complainant corporation, to Mr. Cahill and Mr. Ray, and the advertising by circular letter of the property in an amount less than what defendant had paid for it was to discourage the presence of bidders at the sale and to prevent competitive bidding for the property.

EDGAR ROSS.

Subscribed and sworn to before me  
this 26th day of August, 1927.

30 JOHN P. NUGENT, JR.,  
Attorney at Law  
of New Jersey.

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*Defendant-Appellant's Affidavits on Order to Show Cause.*

IN CHANCERY OF NEW JERSEY.

Between EYPPER & BECKMANN, INC., a corporation, <i>Complainant,</i> and EDGAR ROSS, <i>Defendant.</i>	On Bill, etc.      10 Affidavit. On Order to Show Cause.
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State of New Jersey, }  
County of Hudson, } ss.:

WILLIAM M. CAHILL, JR., of full age, being duly sworn according to law upon his oath deposes and says: 20

I reside at 2540 Hudson Boulevard, City of Jersey City, County of Hudson and State of New Jersey. I have resided in the City of Jersey City for upwards of twenty-nine years last past. I am engaged in the general real estate business with offices at 15 North Dean Street, Englewood, New Jersey. I have been in the real estate business for nine years last past. 30

I am personally acquainted with Edgar Ross, the defendant in the above entitled cause, and also with George Beckmann, a member of the complainant corporation. I met the said Beckmann on a number of occasions in connection with Bergen County real estate transactions and my acquaintance with him began in the month of June, 1926.

I knew nothing about the pendency of the above entitled cause until my attention was called to an advertisement of the sale of this property by Walter G. Winne, as representative of the Court. My recollection is that I first saw this advertisement 40

*Defendant-Appellant's Affidavits on Order to Show Cause.*

10 about two weeks before the first published date of sale. Being in the real estate business I communicated with the defendant Ross with regard to the property. I told Ross that I had in mind a buyer who would in all likelihood be interested in the purchase of the property. The buyer I refer to is one Samuel Ruskin who resides on Brinkerhoff Street, in the City of Jersey City. I had up to that time not had sufficient opportunity to canvass the situation with Ruskin, and I called the said George Beckmann on the telephone to ask for an adjournment of the sale. I communicated with Beckmann directly over the telephone and had a conversation with him. I know well the said Beckmann's voice and clearly recognized the voice of 20 the man who spoke with me over the telephone as that of the said Beckmann. This conversation occurred about two days prior to the first advertised date of sale.

In the course of the conversation with Beckmann I frankly told him my purpose and my interest in the whole matter. I told Beckmann that I had a buyer for the property, and that I needed a little more time in which to work on him. What I asked Beckmann for was an adjournment of two weeks. 30 I told Beckmann that I knew Ross very well, and that if I were given a chance, I was quite sure that my prospect would be interested in the property to the extent of offering a price that would make good the contract that Eypper & Beckmann had with Ross.

40 Beckmann absolutely refused to consider any request from me for the adjournment of the sale. He stated that all that I had said to him was no reason for giving any adjournment because if I had a prospect, I could do much better by dealing with Eypper & Beckmann for the property than

*Defendant-Appellant's Affidavits on Order to Show Cause.*

with Ross. He said that the property would cost Ross \$2,400 an acre approximately, whereas by dealing directly with Beckmann's concern, the property could be gotten for between \$2,000 and \$2,200 an acre. Beckmann further stated that he was quite sure that there would be a deficiency 10 against Ross.

Just prior to the sale of this property by Walter G. Winne, and while the property was being advertised for sale under order of the Court, Eypper and Beckmann were also advertising the property for sale. The advertising that was done by Eypper & Beckmann was in the form of a circular letter which was mailed to real estate brokers generally. It is my best present recollection that the price at 20 which Eypper & Beckmann offered the property for sale to brokers and as stated in the circular letter referred to, was \$2,250 an acre. One of the circular letters referred to was received and read by me. It was received in my office in the mail.

As a result of the statements made to me by Mr. Beckmann that I could obtain the property after sale from the complainant corporation for a sum between \$2,000 and \$2,200 per acre and further realizing that the circular letter sent out by Eypper & Beckmann, the complainant, therein, had been received by real estate brokers throughout the County. I immediately ceased all negotiations to effect a sale of the property at the figure it had been sold to Mr. Ross, to wit, approximately \$2,400. 30

WM. M. CAHILL, JR.

Subscribed and sworn to before me  
this 26th day of October, 1927. 40

JOHN P. NUGENT, JR.,  
Attorney at Law  
of New Jersey.

*Defendant-Appellant's Affidavits on Order to Show Cause.*

IN CHANCERY OF NEW JERSEY.

10	Between EYPPER & BECKMANN, INC., a corporation, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;">and</div> EDGAR ROSS, <div style="text-align: right;"><i>Defendant.</i></div>	On Bill, etc. Affidavit. On Order to Show Cause.
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HARRY R. REY, of full age, being duly sworn according to law upon his oath deposes and says:

20 I reside at 635 Pavonia Avenue in the City of Jersey City, County of Hudson, and State of New Jersey. I have lived in Jersey City for ten years last past.

30 I knew of the sale of the property to be held by Walter G. Winne, as representative of the Court in this case, as a result of having read some of the published notices of sale. Information as to the sale had also been given to me by Mr. William M. Cahill, Jr., with whom I am associated, a real estate broker of Englewood, New Jersey. I was interested in the sale, believing that I had one or two persons who would be willing to purchase the property. One of the persons I refer to was a man upon whom I called and with whom I negotiated, Ellis P. Earl, 165 Broadway, New York City. I had also co-operated with Mr. Cahill in his negotiations with Mr. Samuel Ruskin of Jersey City.

40 I had learned that the sale did not take place on the first advertised date, that is July 6, 1927, and on July 8th, I went to the office of Eypper & Beckmann, Palisade Park, for the purpose of obtaining

*Defendant-Appellant's Affidavits on Order to Show Cause.*

a map of the property. Mr. Cahill told me that he had no map of the property, and that I might be able to get one at the office of Eypper & Beckmann, Inc., Palisade Park. I immediately went to the office of Eypper & Beckmann, and there saw Mr. Beckmann. I asked him for a map of the property and stated to him my interest in it as hereinabove set forth. He stated that he had no large maps, but he did give me a small circular map. I asked Mr. Beckmann what, in all probability, the property could be bought for. He said to me that it was then in process of being sold by order of the Court and that the defendant in the case would more than likely not be able to take the property at the sale for the reason that he had paid for the property \$2,350 an acre. Beckmann stated further that as the company would have to take the property back, purchasers could deal with them on a better basis than with anyone else. He said that after the sale the property could in all likelihood be bought from Eypper & Beckmann for about \$2,200 an acre. I asked Mr. Beckmann how they could sell the property at such a reduction and pay a commission. He responded by saying that his company was protected because they would get a deficiency judgment against the defendant in the case, which would protect them against any difference between the contract price and what the property brought at the sale. I thereafter made no effort to have any bidders present at the sale.

Another prospect with whom I conducted negotiations for the sale of this property is Mr. Isaac M. Shackter of 54 Newark Avenue, Jersey City. I had submitted to Mr. Shackter the proposition of purchasing this property. He was interested. We had conferred at length on the subject. Mr. Shack-

*Defendant-Appellant's Affidavits on Order to Show Cause.*

10 ter asked me to see him again when his partner, Mr. Shuckman returned to the city. I had an appointment to see Mr. Shackter in the next week. During the week following my talk with Shackter as above stated, I saw a number of circular letters which had been mailed to real estate brokers and operators, which was an advertisement by Eypper & Beckmann of the property in question, for sale at a figure which I now recall to be \$2,250 per acre. These circular letters were received in the mail apparently from Eypper & Beckmann, while the sale in this suit under an order of the Court was being advertised.

20 When I learned of the advertising of the sale of the property by Eypper & Beckmann, Inc., at the figure stated, I discontinued all further negotiations with Mr. Shackter and never saw him again on the subject. I discontinued all negotiations because I knew that another partner of Mr. Shackter's, Isaac Klinghoffer, is a real estate broker in Jersey City and in all probability knew of the offer being advertised by Eypper & Beckmann.

HARRY R. REY.

30 Subscribed and sworn to before me this 28th day of October, 1927.

JOHN P. NUGENT, JR.,  
Attorney at Law  
of New Jersey.

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**Defendant-Appellant's Order to Show Cause.**

Filed November 7, 1927.

IN CHANCERY OF NEW JERSEY.

Between EYPPER & BECKMANN, INC., a corporation of the State of New Jersey, <p style="text-align: right;"><i>Complainant,</i></p> and EDGAR ROSS, <p style="text-align: right;"><i>Defendant.</i></p>	}	On Petition. Order to Show Cause.	10
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20 Upon reading and filing the duly verified petition of Edgar Ross, the defendant in the above entitled cause, it is on this 29th day of October, 1927.

30 ORDERED, that Eypper & Beckmann, the complainants in the above entitled cause, show cause before the Chancellor at Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, on the 7th day of November, 1927, at ten o'clock in the forenoon or as soon thereafter as the Court can attend to the same, why the prayer of the said petition should not be granted. And it is further

40 ORDERED, that in the meantime and until the further order of this Court, Eypper & Beckmann, a corporation, complainant, its attorneys, solicitors, agents and representatives are hereby restrained and enjoined from in any wise further pursuing or taking any steps upon any motion or in any suit or proceedings for the purpose of, or calculated to result in the obtaining of an order directing pay-

*Defendant-Appellant's Order to Show Cause.*

ment of a deficiency judgment in the above entitled cause. And it is further

10 ORDERED, that a copy of this order and of the said petition filed herein, certified by the solicitors of the complainant, be served on Clarence Mabie, solicitor of the complainant within two days from the date hereof.

Solicitors may apply to the Court for a modification of this order upon two days' notice, assigning in the order the reason therefore.

Respectfully advised,

E. R. WALKER,  
Chancellor.  
C.

20 JOHN F. FALLON,  
Vice-Chancellor.  
V.-C.

A true copy.  
PERKINS & DREWEN,  
Solicitors of Petitioner.

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**Order Dismissing Appellant's Order to Show Cause.**

Filed November 14, 1927.

IN CHANCERY OF NEW JERSEY.

Between EYPPER & BECKMANN, INC., a corporation of New Jersey, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;">and</div> EDGAR ROSS, <div style="text-align: right;"><i>Defendant.</i></div>	}	On Bill, etc. On Application for Rule to Show Cause. Order to Dismiss.	10
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This matter being opened to the Court by Messrs. Perkins & Drewen, solicitors for the petitioner, Edgar Ross, in the presence of Clarence Mabie, solicitor of the complainant, Eypper & Beckmann, Inc., and it appearing that the petition, duly verified has been filed herein by said defendant on application for an order to show cause why said complainant should not be restrained and enjoined from in anywise collecting or attempting to collect, realizing or attempting to realize any amount on account of the deficiency arising from the sale of the said premises against petitioner or in anywise further pursuing or instituting any action, suit, cause or motion or other proceedings, for the purpose of, or calculating to result in the realizing or collection of the deficiency realized at the sale of the lands and premises, and why the said complainant, their solicitors, agents, and representatives, and each of them should not be forthwith enjoined and restrained from so doing until the further order or decree of this Court in the premises, and that the sale of said premises may be opened and set aside, and an order made for the resale of the said lands and premises at public vendue, on a date

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*Order Dismissing Appellant's Order to Show Cause*

10 to be fixed at the discretion of the Court; that the hearing of said petition, together with a petition praying for an order directing the payment of a deficiency realized at the sale of the premises in question, said petitions, by agreement of counsel, to be heard by the Court at one time, to wit: on November 7th, 1927, at 10 o'clock in the forenoon or as soon thereafter as counsel may be heard, said hearing being continued by this Court to November 14, 1927.

20 And the Court having read and considered the said petition and affidavits in support thereof and the answering affidavits in behalf of said complainant on petition for said rule, and having heard and considered the arguments of counsel; and the Court being satisfied that the prayer of said petition to set aside said sale and order re-sale of the premises in question should not be granted;

IT IS, on this 14th day of November, 1927,

30 ORDERED, that the petition filed by said defendant for the purpose of setting aside said sale on order to show cause, be and the same is hereby dismissed upon the payment by the defendant to the said complainant of its costs to be taxed; and it is

FURTHER ORDERED, that a true, but uncertified copy of this order be served on the defendant, Edgar Ross, or his solicitors, within three days from the date of this order.

Respectfully advised,

E. R. WALKER,  
Chancellor.  
C.

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JOHN BENTLEY,  
Vice-Chancellor.  
V.-C.

**Order That Appellant Pay Deficiency.**

Filed November 14, 1927.

IN CHANCERY OF NEW JERSEY.

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EYPPER & BECKMANN, INC., a New Jersey corporation, <i>Complainant,</i>	}	On Petition for Order Directing Payment of De- ficiency.  Order.	10
and			
EDGAR ROSS, <i>Defendant.</i>			

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This matter being open to the Court by Clarence Mabie, solicitor for and of counsel with the complainant, Eypper & Beckmann, Inc., a New Jersey corporation, and in the presence of John Drewen, of counsel with the defendant, Edgar Ross. 20

And it appearing that a petition has been filed herein by the said complainant, alleging that upon the sale of the lands and premises described in the bill of complaint in this cause, made by Walter G. Winne, Esquire, one of the special masters of this Court, pursuant to the terms and directions of an order of this Court made in this cause on May 16th, 1927, to raise and satisfy the sums of money mentioned in said order and also the costs of the proceedings to obtain said order to be taxed, a deficiency has arisen of \$72,317.96, with interest thereon from July 13th, 1927. 30

And it appearing that due notice of this application has been given to said Edgar Ross; and the Court having read and considered said petition, and having duly considered the matter, and being satisfied that the allegations of said petition should be granted; 40

*Order That Appellant Pay Deficiency.*

IT IS, on this 14th day of November, 1927.

10 ORDERED, ADJUDGED AND DECREED, that the defendant, Edgar Ross, pay to the complainant, Eypper & Beckmann, Inc., a New Jersey corporation, the sum of \$72,317.96 together with interest thereon from July 13th, 1927, being the deficiency arising on said sale of lands and premises as aforesaid.

AND IT IS FURTHER ORDERED, that the said defendant pay to the said complainant the costs of these proceedings to be taxed, including a counsel fee of ..... which is hereby allowed to said complainant.

20 AND IT IS FURTHER ORDERED, in case the said defendant should fail to pay to said complainant the said sum of \$72,317.96 with interest as aforesaid, and said taxed costs within 30 days after the service upon the said defendant of true but uncertified copies of this order and of said taxed costs, that execution issue against the goods and chattels, lands, tenements, hereditaments, and real estate of said defendant to make said sums according to the practice of this Court.

30 IT IS FURTHER ORDERED, that true copies of this order certified by complainant's solicitor and of said taxed costs be served on the said defendant's solicitors within 10 days after the date hereof.

Respectfully advised,

E. R. WALKER,  
Chancellor.  
C.

40 JOHN BENTLEY,  
Vice-Chancellor.  
V.-C.

**Opinion.**

Filed December 12, 1927.

IN CHANCERY OF NEW JERSEY.

Between EYPPER & BECKMANN, INC., a corporation of the State of New Jersey, <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;">and</p> EDGAR ROSS, <p style="text-align: center;"><i>Defendant.</i></p>	}	On Bill, etc. Memorandum of Opinion.	10
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December 12, 1927. 20

CLARENCE MABIE, Esq., for the Complainant.

JOHN DREWEN, Esq., for the Defendant.

MEMORANDUM OF OPINION.

BENTLEY, V. C.: 30

On motions &c.

The complainant, as vendor, secured an order in a suit for specific performance, for the sale of certain lands in Bergen County which were the subject matter of this suit, and which the defendant was under contract to purchase. At that sale there was a deficiency of approximately \$73,000, which the defendant has now been ordered to pay and satisfy. From two orders herein the defendant has appealed, and it therefore becomes necessary to state the reasons for the decisions to be reviewed. 40

*Opinion.*

10 The defendant obtained an order to show cause for the purpose of attempting to set aside the sale of the land. From his proofs it is made to appear that the complainant, through one of its officers, undertook to encourage competition at the master's sale at the complainant's expense of about \$500, by circularizing a large number of persons interested in Bergen County real estate transactions. This effort consisted of enclosing to each prospect a copy of the special master's advertisement and a circular letter setting forth the desirability of the land. I failed at the argument, as I fail now, to see how this action could have been injurious to the defendant, and feel, on the other hand, that it was designed to be beneficial to him.

20 There is proof that there was at least one bidder prepared to bid at the day first appointed for the sale which was continued at the earnest solicitation of the defendant. At the day of actual sale no one would bid except the complainant.

The other ground for setting the sale aside was gross inadequacy of price. I do not see how it can be said that the discrepancy is sufficient to give rise to a conclusion that the sale was infected by fraud. *Hoffman v. Godfrey*, 79 N. J. Eq., 617.  
30 As I recall the figures, the defendant agreed to pay \$205,000 for the property. Judging from the amount of deficiency, there must have been bid upwards of \$130,000. When the value involved is considered, together with the adjournment of the sale, the price bid is not surprisingly small.

The other order mentioned above was one secured by the complainant, directing the defendant to show cause why he should not be compelled to make good the deficiency. The discharge of the defendant's order to show cause, which was fully argued, automatically required the making of the complainant's order to show cause absolute.  
40

83 FEB.T.1928

## New Jersey Court of Errors and Appeals

Between  
 EYPPER & BECKMANN, INC., a  
 corporation of the State of  
 New Jersey,  
*Complainant-Appellee,*  
 and  
 EDGAR ROSS,  
*Defendant-Appellant.*

On Bill, etc.  
 On Appeal from  
 the Court of  
 Chancery.

### BRIEF FOR DEFENDANT-APPELLANT.

The result obtained in this case is a distinct shock to the conscience.

The barest outline will perhaps put the case in the clearest relief.

Ross, the defendant, agreed to buy from Eypper and Beckmann, real estate operators, a tract of land in Bergen County. Ross paid \$13,000 cash upon the signing of the contract, but was financially unable to complete the purchase.

The Court of Chancery first decreed Specific Performance against Ross. He was unable to perform. The last decree of the Court of Equity was that Ross pay to Eypper & Beckmann a deficiency of \$72,317.96.

Out of the contract to sell the land, which was to yield Eypper & Beckmann about \$107,000 over the incumbrances, Eypper & Beckmann *without ever parting with the possession of the property or with the title*, or with anything substantial, managed to obtain a decree which gives them a profit of \$85,000 (less the court expenses).

Eypper & Beckmann kept the land; kept possession of it; kept the \$13,000 deposit and now have a decree from Chancery for \$72,000 more to be paid by Ross to them.

This may be equity and justice, but it doesn't sound right. It certainly is an amazing result arising out of a decree for specific performance of a contract for the sale of land in which Eypper & Beckmann's equity was only \$107,000.

On May 18, 1926, the parties entered into a contract for the sale of a tract of land of about ninety-eight acres (Contant, p. 23, line 17).

There were underlying mortgages on this land amounting to \$98,800 not due until September 15, 1931 (Eypper & Beckmann advertisement, p. 22, line 30)—or about \$1,000 per acre.

Under the contract, according to Beckmann's affidavit, Ross was to pay:

Cash on signing of the contract.	\$ 18,170.00
Cash on closing.....	53,494.08
Secured by mortgage to Eypper & Beckmann .....	35,489.33

Or a total price of..... \$107,153.41

Eypper & Beckmann actually got:

Cash on signing of the contract.	\$13,000.00
Chancery Decree .....	72,317.96

A total of..... \$85,317.96

*They still have the land which was the subject of the contract, and still retain possession of Ross's unpaid check for \$5,000.*

The various steps by which the complainant obtained this remarkable relief from the Court of Chancery are as follows:

First, by a bill against Ross for specific performance of a contract to buy the land.

Second, upon Ross's failure, through financial inability, to pay the purchase price, a decree for the sale of the land by a Special Master.

Third, the sale of the lands by the Special Master to Eypper & Beckmann for \$25,000.

Fourth, an order directing Ross to pay to Eypper & Beckmann the difference between the price he agreed to pay them for the land and the price they paid the Special Master for the same land—namely, \$72,317.96.

We urge that the result is a gross injustice to the defendant. The result of the action of the Court of Chancery is a distinct shock to the conscience.

Eypper & Beckmann never having delivered a deed for the property, nor parted with possession of the property, by the simple process of buying in the property at their own Master's sale and at their own price, without competition of any kind, succeed in making a profit of about \$85,000. On the day the Master offered the property for sale no bidders were present except Eypper & Beckmann. The sale was being held at their instance; they were in possession of the property and had title to it; they had Ross's \$13,000 in their bank account, the unpaid check for \$5,000 in their possession, and a decree against Ross for the payment of about \$95,000, and under the circumstances they were generous enough to bid \$25,000 and forthwith went back to the Court of Chancery and obtained a decree that Ross pay them \$72,317.96 more.

Under the contract which Eypper & Beckmann made with Ross they were obliged to take back,

on account of the purchase price, a mortgage for \$35,489.33 (p. 11, line 24).

After the property was bid in by Eypper & Beckmann, Ross petitioned the Court of Chancery for a re-sale of the property, and at the same time Eypper & Beckmann petitioned the Court for a deficiency decree against Ross for \$72,317.96.

The Court of Chancery dismissed Ross's petition for a re-sale of the premises and on the contrary made an order that he pay Eypper & Beckmann \$72,317.96.

From both of these orders Ross appeals.

We submit that if this Court can find any reasonable ground upon which to grant a re-sale of the premises, common equity and justice require it to be done.

## POINT I.

### Inadequacy of consideration.

The Court below dismisses the idea of inadequacy of consideration by saying, "I do not see how it can be said that the discrepancy is sufficient to give rise to a conclusion that the sale was infected by fraud. *Hoffman v. Godfrey*, 79 N. J. As I recall the facts, the defendant agreed to pay \$205,000 for the property. Judging from the amount of deficiency, there must have been bid upwards of \$130,000. When the value involved is considered, together with the adjournment of the sale, the price paid is not surprisingly small" (p. 50, lines 25, etc.).

The Court below was not justified in taking into consideration the \$98,800 of underlying mortgages on the property. What was being sold by the Special Master at most could only have been the equity that Eypper & Beckmann had in the prop-

erty. Ross had agreed to pay Eypper and Beckmann for their equity about \$107,000. When Eypper and Beckmann bought at the Master's sale the bid was \$25,000 and no more. At best, Eypper and Beckmann were buying back from the Special Master for \$25,000 what they a few months before had sold to Ross for \$107,000—and what is more, had obtained a decree against Ross that he should pay the \$107,000, less \$13,000 he had already paid.

This is not the ordinary case of inadequacy of consideration. This is a case in a Court of Equity where the complainant obtains a decree for specific performance of a contract to buy land; the defendant does not wilfully disobey the order of the Court, but through inability, at the moment, to finance the transaction, defaults.

Then at the instance of the complainant, the Court makes an order for sale of the land by a Special Master, and the complainant still retaining title and possession, and without the presence of any other bidders, bids \$10,000 less at a Master's sale than he was obliged to take back on a mortgage upon the completion of the contract.

The inadequacy is so startling that it must shock the conscience of a Court of Equity.

There was no diminution in the value of the land. Pending the Master's sale, Eypper and Beckmann sent out an advertisement over their own signatures calling attention to the property in the following words: "This tract of ninety acres lies between the property of Dr. Paterno, which adjoins on the north and the Interstate Park which is on the south. It can be stated positively that Dr. Paterno paid approximately \$4,000 per acre for his tract of about one hundred acres, and that he is holding the same at the price of \$8,000 per acre" (p. 22, middle).

There can be no question but that if Ross had

been clever enough he would have gone to the sale or had a puffer there, and that Eypper and Beckmann would have bid up probably to the amount of their decree. It was not an open and fair sale where the purchaser comes in and takes the property at the market value.

Eypper and Beckmann had a decree requiring the payment by Ross of about \$95,000. The whole real estate world interested in Bergen County real estate, knew that it was futile for any real estate operator to go there and bid against Eypper and Beckmann. A man on the outside would be obliged to bid in dollar currency. Eypper and Beckmann up to \$95,000, could bid in decree currency. As a matter of fact, Eypper and Beckmann never paid the Master \$25,000. They just simply paid the Master's fees. With just the same ease and lightness of purse, Eypper and Beckmann could have bid any amount up to the amount of their decree.

In other words, what we mean to say is that this was really not a sale but a mere gesture in which all the forms of a sale were gone through with. No sale actually took place. Eypper and Beckmann had a decree for specific performance against their buyer. The buyer defaulted for lack of funds. Eypper and Beckmann procured an order to sell the property. Now what was the Master selling? Eypper and Beckmann had not parted with anything. Was the Master selling what still remained in Eypper and Beckmann? If so, they, Eypper and Beckmann, were buying from the Master what they already had. Was the Master selling the interest that Ross had in the property? If so, the interest Ross had was the \$13,000 he had put up and lost, plus his right to take the property upon the payment of \$95,000 more. The offering of the property by the Master and the one and only bid by

Eypper and Beckmann were mere gestures. Eypper & Beckmann could just as well have bid \$100 or \$1,000, or \$90,000, and no money would pass.

By treating this strictly as a case of inadequacy of consideration, we have the factors that by the contract Ross was to pay Eypper and Beckmann about \$107,000 for their equity in the land, and Eypper and Beckmann were buying the same back from the Master within a few months at \$25,000. If we take into consideration the underlying mortgage of \$98,800, subject to which Ross was to take title and which did not fall due for more than five years, the selling price of the land was about \$2,200 per acre. Eypper and Beckmann in their advertisement (p. 22) state positively that Dr. Paterno (the most outstanding real estate operator in the vicinity) paid approximately \$4,000 an acre for adjoining lands and was holding the same at \$8,000 per acre.

The underlying lien on the lands in our contract is about \$1,000 an acre. When Eypper and Beckmann bid the property in at the Master's sale *they bid about \$300 per acre above this underlying lien*, and at the same time Dr. Paterno had paid \$4,000 an acre for similar land adjoining it and was holding it at \$8,000. Under the circumstances, would it not be equity and justice to permit a re-sale of this property? Eypper and Beckmann can not lose anything. Before anyone can acquire the property as against them, the purchaser must pay out their entire contract price with interest. By refusing to grant a re-sale, the Court permits Eypper and Beckmann to retain the land and make a profit of \$85,000 out of the equity suit.

## POINT II.

### **Eypper & Beckmann discouraged possible purchasers at the Master's sale.**

William M. Cahill, Jr., a real estate dealer, swears by affidavit on page 37 of the case, that his attention was called to the sale by an advertisement of the Special Master, and that he had a prospective purchaser for the property.

Cahill swears that he spoke to Beckmann about an adjournment of the sale:

"Beckmann absolutely refused to consider any request from me for the adjournment of the sale. He stated that all that I had said to him was no reason for giving any adjournment, because if I had a prospective buyer, he could do much better by dealing with Eypper and Beckmann for the property than with Ross. He said that the property would cost Ross \$2,400 an acre approximately, whereas by dealing directly with Beckmann's concern, the property could be gotten for between \$2,000 and \$2,200 an acre. \* \* \*"

"As a result of the statements made to me by Mr. Beckman that I could obtain the property after sale from the complainant corporation for a sum between \$2,000 and \$2,200 per acre, \* \* \* I immediately ceased all negotiations for the sale of the property. \* \* \*"

The affidavit of Harry L. Rey, another real estate dealer is to the effect that he knew of the sale of the property to be held by the Master, that he was interested in the sale and believed that he had one or two persons who would be willing to purchase the property, that he went to the office of Eypper and Beckmann and (p. 41, line 20):

"Beckmann stated further that *as the company would have to take the property back*, purchasers could deal with them on a better basis than with anyone else. He said that after the sale, the property could in all likelihood be bought from Eypper and Beckmann for about \$2,200 per acre."

We submit that the conduct of the complainant was such as to discourage possible bidders at the Master's sale, in order that the complainant might bid the property in at its own price. This interference by the complainant alone would justify the Court in ordering a re-sale of the property.

Especially so in view of the fact that no bidders whatever appeared at the sale and that the complainants, Eypper and Beckmann, through their own conduct, were permitted to pick the property off at any price they saw fit.

## POINT III.

### **Complainants interfered with the Master's sale.**

While sale by the Master was pending, Eypper & Beckmann were offering the property for sale in an advertisement over their own signatures, which implied that they had the property for sale.

The advertisement they sent out appears on page 22 of the case. Eypper & Beckmann state in their affidavits that they spent about \$500 in advertising the property. The Court below indicates that this was an effort to "encourage competition at the Master's sale."

We submit that if it was possible for the interference of Eypper & Beckmann with the Master's sale to have *any other effect* than the encourage-

ment of competition, it is sufficient ground for setting the sale aside.

First, nothing can be more positive than that their interference did not *encourage* competition. There were no bidders present at the sale by Eypper and Beckmann. The Court assumed, and for the purpose of this argument we are willing to assume, that they had good motives in sending out the advertisement, although if we place any credence in the affidavits of Cahill and Rey, they probably had very practical designs.

We repeat that even if the "complainants undertook to encourage competition", it is absolutely undeniable that they did not actually encourage competition. So their motives, if they were good, can not be availing.

The sending out of these advertisements by Eypper and Beckmann either (a) encouraged competition, or (b) had no effect, or (c) discouraged competition.

As to (a) the encouragement of competition, it goes without saying that it did not encourage that which did not exist, (b) it is possible that it had no effect, but we insist that in fact it actually tended to and probably did discourage competition.

The only possible purchasers at a sale of this kind would be real estate operators and speculators in Bergen County acreage. It is to just these persons that Eypper and Beckmann sent out the advertisement, and this advertisement will bear close scrutiny, to see what effect it would have upon persons likely to be bidders at the Master's sale.

Eypper and Beckmann were the owners of the premises in question. This fact was known to all the possible purchasers. The land lies not far from the westerly portal of the Hudson River Bridge now under construction. The amount of acreage in the vicinity is limited, and the acreage which is for sale is still more limited.

There is nothing in the advertisement of Eypper and Beckmann which is *inconsistent with their ownership of the land*. There is nothing in the advertisement inconsistent with the idea that *they* were offering the land for sale. There is nothing in the advertisement indicating that the property was to be sold at a judicial sale. The advertisement reached either one of two classes of possible purchasers: (1) those who knew that the property was to be sold under a judicial sale, and (2) those who did not know that it was to be so sold.

As to the first class, it certainly discouraged competition for those who knew that the property belonged to Eypper and Beckmann, and was to be sold under a judicial sale, also knew that they could not even make an effective bid on the property until the full price to be paid to Eypper & Beckmann by Ross was reached at the Master's sale. They would clearly know that up to the full price that Eypper and Beckmann had sold it to Ross, that Eypper and Beckmann would be bidding at the sale in decree currency and not in dollar currency, and that it would be useless for them to attend the sale, for Eypper and Beckmann, unless they wished to realize a loss, could safely and securely without putting up a dollar, bid to the full extent of their decree in the Court of Chancery. In effect, the advertisement of Eypper and Beckmann was to give notice that nobody having knowledge of the judicial sale need attend, and that is exactly what happened. It practically gave notice that if anyone wanted to buy this property, they had to deal with Eypper and Beckmann, and not with the Special Master.

Now, as to the class of persons who did not know of the proposed Master's sale. Everyone in that class would be justified upon reading the advertisement, in believing that Eypper and Beckmann

were the owners of the property and were offering it for sale as owners.

We respectfully insist that in either event, Eypper and Beckmann, through their advertisement, were guilty of an interference with the judicial sale, that the effect of their advertisement was to discourage possible bidders, and that it had exactly that effect.

We respectfully submit that if there is any doubt whatever as to the effect of Eypper & Beckmann's offering this property for sale, *while the Master's sale was pending*, that doubt must be resolved in favor of a re-sale.

PERKINS & DREWEN,  
Counsel for Edgar Ross,  
Defendant-Appellant.

83 83 FEB.T.1928

## New Jersey Court of Errors and Appeals

Between EYPPER & BECKMAN, INC., a corporation of the State of New Jersey, <p style="text-align: center;">Complainant-Appellee,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">EDGAR ROSS,          Defendant-Appellant.</p>	}	On Bill, etc. On Appeal from the Court of Chancery
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### BRIEF OF COMPLAINANT-APPELLEE.

Referring to the casual remark, which starts the brief of the defendant-appellant, it may be suggested that the result obtained in this case is not so much a distinct shock to the conscience as it is to the speculative pocket-book.

There may be added to the statement of the defendant-appellant, that this case is one that had its inception in a contract to buy real property dated May 18, 1926, title to be passed July 18, 1926, and a deed delivered October 18, 1926. Under the provisions of the contract \$18,170 was to be paid on the signing of the contract, but a check for \$5,000 of this sum was not honored and has never been paid. Of the balance \$13,000 was paid and there the contract rested, unconsummated, although the complainant-appellee made many efforts to close. On November 10, 1926, the complainant-appellee filed a bill for specific performance, and every attempt was made by the defendant-appellant to secure more time upon indefinite promises and further action.

This action consisted, first, of the filing of an answer, which was stricken out; second, a rule to show cause, following the sale of the property by the Special Master, to have the sale set aside, which was dismissed (the order before the court is upon a further rule to show cause to attempt to set aside the sale for inadequacy of consideration and interference with the sale by the complainant-appellee); third, an appeal from the decision of the Chancery Court to this court.

A real property contract of sale for the substantial sums involved, is not a contract that may be regarded lightly, nor one that should permit a buyer to come before any court to complain, upon the general ground that "this may be equity and justice, but it doesn't sound right" (Bf. Deft.-App., p. 1).

A sale of the property did occur, advertised by the Special Master in accordance with the statutory requirements, by publication for 4 calendar weeks (P. L. 1912, p. 130) and posting in a few public places. It must be conceded that such requirements, for the purposes of giving publicity, though limiting the expense, are inadequate. The complainant-appellee had no burning desire to purchase the property in question, subject, as it was, to mortgage liens of \$98,800 plus large sums, which were compelled to be paid for interest taxes and the cost of litigation. An effort, therefore, was made, upon advice of counsel (S. C., p. 12, l. 30) to obtain the presence of bidders, and a circular letter, stating the possible advantages of the property was sent by the complainant-appellee to persons by whom they believed to be interested. And in addition to this effort, the complainant-appellee, out of its own Treasury, expended \$500 for advertisements in New York papers calling attention to the public sale of the property (S. C., p. 13, l. 20). A further

evidence of the good faith of the complainant-appellee to bring bidders to the sale was the enclosure, with each circular letter, of a copy of the official notice (S. C., p. 13, l. 12) by Walter G. Winne, Esquire, the Special Master selling, which notice is in the file of this case and contains the usual notice of the time and place of sale and a description of the property in question.

Following these efforts to sell and to obtain bidders, the Special Master was met with an insistent request to adjourn the sale for a week, the defendant-appellant and his representative stating at the time that if an adjournment of one week were granted no more adjournments would be requested (S. C., p. 25, l. 40).

The defendant-appellant did not appear, nor did anyone representing him, on the adjourned day of sale, and the unfortunate fact is that buyers were represented on the advertised day and were present ready to bid (S. C., p. 20, l. 10; S. C., p. 23, l. 35; S. C., p. 26, l. 15). No bidders appeared on the adjourned day.

The statement by the defendant-appellant that no money was actually paid for the \$25,000 bid at the sale is unimportant. There is no question about the credit of this sum, in the accounting of the complainant-appellee.

The defendant-appellant has overlooked items of interest and costs in his argument; the statement of the complainant-appellee (S. C., p. 18) indicates the amount for which a deficiency judgment was entered.

It is contended that, while the complainant-appellee was compelled, to protect itself, to buy the premises in question at public sale, an argument that such complainant-appellee has the first payments on account of the contract and also the property is without force. The complainant-

appellee expended in compulsory payments large sums of the first payments, has a dishonored check for \$5,000, probably uncollectible, and an expensive piece of land to carry, whereupon the overhead ceases not. It is contended that the entry of the deficiency judgment was a proper one under the order of the Court of Chancery now before this Court.

### POINT I.

**The consideration was not inadequate and was without an element tending to stifle or cripple competition.**

"In the absence of fraud, irregularity, accident, or mistake, judicial sales will not be set aside for inadequacy of price unless the inadequacy of price is so gross as to justify an inference of fraud."

*Hoffman v. Godfrey*, 79 N. J. Eq. 617.

In the case at bar the property in question was contracted to be sold for \$58,494.08 in cash and a second mortgage of \$35,489.33 and the assumption of first mortgages of \$98,800. These figures aggregating \$192,783.41.

It has been held, even if an inadequate price were obtained (which is denied), that if such price bid at a fairly and regularly conducted sale, a refusal to confirm this sale will not be justified, even holding that if, upon a re-sale, 21% more for the property could be received. The original bidder must not be deprived of the advantage of his bid.

The figure given in this case was for property sold on execution for \$6,200 when worth \$9,000 to

\$15,000. It is stated not to be a ground for setting aside the sale.

*Bethlehem Iron Company, et al., vs. Philadelphia and Seashore Railway Company*, 49 N. J. Eq. 356.

One of the very old cases states:

"It would require a very strong case of fraud, mistake, surprise or accident, to induce the Court of Equity to interfere with the completion of a sale upon an execution at law."

*Skillman, Assignee v. Holcomb, et als.*, 12 N. J. Eq. 131.

The case at bar is not one upon execution at law but upon the allegation of the defendant that the conduct of the complainant was inequitable and unlawful.

Questions of mistake and misapprehension are clearly decided in the Court of Equity. The decisions are old ones. Fraud and irregularity must appear.

In the first volume of the New Jersey Equity Reports, in *The President and Directors of the Bank of New Brunswick vs. Aaron Hassert, et als.*, at page 1, it is held

"Mere inadequacy of price is not sufficient to avoid a contract or set aside a sale made by the Sheriff when no fraud or irregularity appears."

And, also,

"Inadequacy of price can never be the grounds for setting aside a deed unless accompanied by fraud or misapprehension."

The trend of decisions as to inadequacy of price is

“Inadequacy of price at a judicial sale is not, of itself, sufficient cause to void the sale, unless so gross as to be proof of fraud, or to shock the judgment and conscience.”

*Marlatt v. Warwick and Smith*, 18 N. J. Eq. page 108.

And again

“Mere inadequacy of price is not sufficient to set aside a Sheriff’s deed, nor is it, *per se*, proof of fraud. But even if there has been no fraud, if the inadequacy is gross, and the party whose property has been sold, by reason of mistake or misapprehension, did not attend the sale, and the sacrifice was caused by such mistake or misapprehension, the sale will be set aside.”

*Klopping et ux., vs. Stellmacher*, 21 N. J. Eq. page 328.

In this case the Court comments, there being a sale of property worth \$1,500 for \$52:

“This is a gross, a very gross inadequacy of price, from which fraud in some cases might be inferred without further proof. But when such gross inadequacy is combined with fraud or mistake, or any other ground of relief, in equity it will incline the court strongly to afford such relief. The sale in this case is a great oppression on the complainants. They lose by it all their property, and are ill-fitted to acquire more. They are such as this court should incline to protect, notwithstanding perverseness.”

May it be said that the petitioner in this appeal is in such a class? We submit not, but respectfully contend that the sale in the cause was fair, open, and public and without any element that would serve to stifle or cripple competition.

And it has been held, upon the contention that a sale should be opened because a greater sum may be obtained,

“Inadequacy of price is not a ground to set aside a sale, if made regularly and without fraud, where no accident or mistake has intervened to prevent fair competition, the policy of our law respecting official sales not admitting the notion that such sales must be opened because a greater sum can be obtained for the property.”

*Morrissee v. Inglis, et al.*, Err. & App. 46 N. J. Eq. page 306.

Further cases upon this point hold, generally, that inadequacy, coupled with mistake or misapprehension, of ignorant people are sufficient grounds to refuse a confirmation. No such condition existed in the cause at bar.

*Wetzler vs. Schaumann*, 24 N. J. Eq. 64.

*Schilling v. Lintner*, 43 N. J. Eq. page 444.

*Lundy v. Seymour*, 55 N. J. Eq. page 7.

*Raphael, et als. v. Zehner*, 56 N. J. Eq. page 836.

*Palladino v. Hilpert*, 72 N. J. Eq. page 270 (at page 275).

In a case recently decided, reference is made to the old rule by the Honorable Vice Chancellor Howell, in the following language:

“It has long been the settled doctrine and practice of the courts of this State that judi-

cial sales made without irregularity or fraud, and not affected by accident or mistake, will not be set aside for mere inadequacy of price, and that official sales in this State will not be opened on the mere representation that more money may be obtained for the property. The reason given by the court (citing another case) for this position is that it is of the greatest importance to encourage bidding by giving to every bidder the benefit of bids made in good faith and without collusion or misconduct, and at least when the price offered is not unconscionably below the value of the property."

*Knickerbocker Tr. Co. vs. Cartaret Steel Co.*, 81 N. J. Eq. at page 133.

In this case, it is also held

"And (referring to sale) it will not be opened on the mere representation that more money may be obtained for the property."

The syllabus of this case is taken verbatim from the case of *Hoffman v. Godfrey*, 79 N. J. Eq. page 617.

With reference to mistakes alone, it is held

"Only mistakes that have been producing causes of the sacrifice of the property sold will justify the setting aside of judicial sales for inadequacy of price."

*Guaranty Trust Company v. Fitzgerald & Co. Corp.*

Citing *Eberhart v. Gilchrist*, 11 N. J. Eq. 167.

*Klopping v. Stellmacher*, 21 N. J. Eq. 328.

A repetition of the authorities holding, as herein contended, is found in a further opinion and is as follows:

"It has long been the settled doctrine and practice of the courts of this State that judicial sales, made without irregularity or fraud, and which have not been affected by accident or mistake, will not be set aside for mere inadequacy of price, and the reason is thus stated by Mr. Justice Magee in delivering the opinion of this court in *Morrissee v. Inglis*, 46 N. J. Eq. 306, 309; 'This well-known practice is in accord with the policy of our law respecting such sales, which are required to be made, after advertisement sufficient to give publicity, by public outcry to the highest bidder. It is of the greatest importance to encourage bidding by giving to every bidder the benefit of bids made in good faith and without collusion or misconduct, and, at least, when the price offered is not unconscionably below the value of the property. Nothing would more evidently tend to discourage and prevent bidding than a judicial determination that such a bidder may be deprived of the advantage of his accepted bid, whenever any person is willing to give a larger price. The interest of owners in particular cases must give way to the maintenance of a practice, which, in general, is in the highest degree beneficial.' The cases of *Hoffman v. Godfrey*, 79 N. J. Eq. 617, and *Hurley v. Pottach*, 93 N. J. Eq. 167, are subsequent decisions of this court in which this principle has been enforced, although the difference of percentage between the price at which the property was struck off, and the price subsequently offered therefor by a responsible party, was much greater than that which exists in the present case. Other cases in which the court has refused to set aside a judicial sale for inadequacy of price, notwithstanding the fact that the percentage of difference was greater than that which exists in the case now under consideration, are referred to in the

opinion delivered in *Rogers v. Rogers Locomotive Co.* 62 N. J. Eq. 118. For the reasons stated the order confirming the sale will be affirmed."

*Murray v. D'Orsi*, 98 N. J. Eq. page 551.

The case at bar shows, as first cited in this brief, that a contract for \$192,783.41 was actually made; that there was paid on account of this contract (S. C., page 10, line 30) \$13,000; that a check for \$5,000 for an additional payment was never honored (S. C., page 9, line 40); That thereafter, notwithstanding many promises to consummate the contract, it was never so settled and resulted in a bill of complaint upon specific performance filed herein.

Upon the day of sale, notwithstanding the efforts, as hereinafter stated, of the respondent to procure the bidders, the special master selling, sold the property for the sum of \$25,000 (S. C., page 14, line 4). But it must be recalled that the property was subject, at that time, to mortgages thereon for the sum of \$98,800 and that accrued interest and large sums of taxes were due, and in view of the fact that the property was sold and the buyer assumed these encumbrances, the figures then causing the buyer respondent a cost in excess of \$123,000, and without payment of the check for \$5,000.

It may not be contended fairly that the price was inadequate.

When a decree was entered to ascertain the amount due in an application to obtain a deficiency judgment, it was disclosed that \$93,983.41 of principal with interest and costs presented a sum of \$96,646.70 due from the defendant-appellant to the complainant-appellee and that upon account of this sum was credited the sale price, \$25,000, and costs of sale and master's commissions in the sum

of \$24,328.74 showing a deficiency of \$72,317.96 (S. C., page 18).

## POINT II.

### **There was no fraud, irregularity, accident, or mistake in the sale of the property in question.**

In this case every effort to aid the defendant-appellant to save himself was made, and, in briefly reviewing his actions, it is respectfully contended that he failed to care for his interests other than making every effort to gain more time. Nearly a year and eight months have elapsed since the making of the contract and litigation is still pending.

There is no question respecting the good faith of the complainant-appellee in attempting to persuade buyers to attend the sale of the property in question; there was no interference. Added to the circular letter mentioned were advertisements in New York newspapers, and, more than all, and to which reference is made, *supra*, a printed slip of the advertisement of the Special Master selling was enclosed. Several witnesses so testify.

The defendant-appellant knew all about the sale; he may not plead ignorance, stupidity, perversity and poverty, as held in

*Klopping, et ux., vs. Stellmacher*, 21 N. J. Equity at page 329.

He did plead and offer excuses and suggestions of a possible buyer who might be interested, as believed by him, if sufficient time were given to enable the possible buyer or prospect to make up his mind to invest.

The defendant-appellant was present in person on the day advertised for sale with his solicitor (S. C., page 11, line 32) and, in the face of bidders

who stated they were ready to bid and probably could not attend again, he urged an adjournment (S. C., page 23, line 35), and, thereafter, failed to give any attention to the subject except as indicated by an application for a rule to show cause to set aside the sale.

Would it be unfair to characterize his conduct as "inequitable and unlawful"?

Is there any doubt that he received full notice?

An old case (*Stillman, Assignee, vs. Holcomb, et als.*, 12 N. J. Equity 131) in referring to the contentions of a citizen who desired to set aside a sale.

The Court pithily states:

"1. That . . . had no notice. He had all the law requires.

"2. That the sale was advertised only in one paper. That was all the law requires.

"3. That . . . was not present. It was his own fault. He knew of the sale. He was in the neighborhood. He does not say he could have bid more, if he had been there. He consented to the sale after knowing all the circumstances."

### POINT III.

#### **The defendant-appellant, by his own conduct, was guilty of laches.**

"When it is satisfactorily shown that the defendant not only failed to take such measures as would secure the best price for the property, but that the course adopted by him was calculated, if not designed to operate against the sale, and to prejudice the interests of those rights he represented, the sale will be set aside."

*Howell vs. Sebring*, 14 N. J. Eq. 84.

When bidders, who appeared on the date of the advertised sale, arose and stated their readiness and willingness to bid, but could not attend an adjourned sale, did not the defendant-appellant fail to take such measures, in insisting upon an adjournment, that would secure the best price for the property and contribute to the proper attention of the sale.

It has been held:

"That a Court of Equity will not afford relief where the complainant has been guilty of gross laches, or where the injury was caused by his own inexcusable negligence and inattention to his interests."

*David Smith vs. George Duncan*, 16 N. J. Eq. page 236.

There was no enfeebled mental condition of a complainant who had no knowledge of the sale.

*Lundy v. Seymour*, 55 N. J. Eq. pg. 7.

Negligence upon the part of one who invokes the application of the doctrine of setting aside sales for mistake, or of his representative, may defeat its application.

What was the purpose, on the part of the defendant-appellee, in seeking an adjournment of one week and then not even appearing at the adjourned date? May we not refer to the language of the Court in

*Murray vs. D'Orsi*, 98 N. J. Eq. at p. 551:

"Besides, a moment's consideration will make it apparent that the petitioner seeks to speculate at the sale she hopes will be ordered. Neither is there any assurance that a more

favorable bid will be made at another sale, and in this state of affairs the court is asked to keep a creditor or creditors out of his or her just due in the Micawber-like hope that 'something will turn up.' "

It is respectfully submitted that the order dismissing the petition for a re-sale of the premises in question, and the order that a deficiency be paid, stand.

CLARENCE MABIE,  
Solicitor for Complainant-Appellee.