

INDEX

	Page
Notice of Appeal.....	1
Petition of Appeal.....	2
Answer to Petition of Appeal.....	4
Exhibit "A"	15
Exhibit "B"	19
On Bill, Answer of Defendants.....	20
Counter-Claim	27
Exhibits	31 34A
Final Decree	35
Transcript of Testimony.....	37
On Bill, Amended Notice of Appeal.....	54
On Bill ,Answer of Louis Spiegel.....	34A
Replication and Answer to Counterclaim.....	34L

In Chancery of New Jersey

Between
MOORE REALTY COMPANY, Inc.,
Complainant,

—and—

JACOB HOLDMAN, HENRY TAN-
NENBERG AND LOUIS SPIEGEL,
Defendants.

On Bill, etc.

NOTICE OF
APPEAL.

10

TO: William Greenfield, Esq., Solicitor for De-
fendants, 128 Market Street, Newark, New Jersey.

PLEASE TAKE NOTICE that the Moore Realty
Company, Inc., the above named complainant, hereby
appeals from the final decree filed in this cause and
dated the 7th day of December, 1927, and from every
part thereof, to the Court of Errors and Appeals in
the last resort in all causes.

20

Dated: December 28th, 1927.

LOUISE RUTH SHAPIRO,

Solicitor for and of Counsel with Complainant.

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

30

LOUISE RUTH SHAPIRO,

Solicitor for and of Counsel with Appellant.

40

Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between MOORE REALTY COMPANY, Inc., <i>Appellant,</i>	On Appeal from Chancery.
	—and—	
	JACOB HOLDMAN, HENRY TANNENBERG AND LOUIS SPIEGEL, <i>Respondents.</i>	PETITION OF APPEAL.

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

The petitioner, Moore Realty Company, Inc., the Appellant, respectively shows:

1. That your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing the date of the 7th day of December, 1927, in a certain cause wherein your petitioner was the complainant and Jacob Holdman, Henry Tannenberg and Louis Spiegel, were the defendants in this respect to-wit: that the said decree recites and orders and adjudges that the contracts made and entered into by and between the complainant and the defendants for the sale and purchase of said property, which said contracts bear date, March 19, 1926, and July 6, 1926, are hereby declared null and void and of no effect and the final decree further orders adjudges and decrees that the said bill of complaint, be and the same is hereby

40

Petition of Appeal

dismissed as against all the defendants in the above cause; and the aforesaid final decree further orders, adjudges and decrees, that the register of the County of Essex be and is hereby directed to enter a cancellation of the Lis Pendens, dated August 3, 1927, and recorded in the Register's Office of the County of Essex in book K of Lis Pendens for said county on page 80 and that the Bill of Complaint be and the same is hereby dismissed with a counsel fee of One hundred (\$100) Dollars is allowed to William Greenfield, Esq., of counsel with defendants, with costs to be taxed which shall include the counsel fee allowed, and your petitioner appeals from this said decree and from every part thereof, on the grounds that the same is erroneous for that the said Vice Chancellor should have recited and adjudged that your petitioner, the complainant in the Court of Chancery had proved and sustained each and every allegation of her said Bill of Complaint and should have sustained your complainant's bill of complaint.

10

20

Your petitioner therefore prays that the said decree of dismissal may be reversed, rescinded, and for nothing holden, and that your petitioner may have such further relief as shall be just.

MOORE REALTY CO., Inc. 30
 Appellant. By Rose Moore, Pres.

LOUISE RUTH SHAPIRO,
 Solicitor for and of Counsel with Appellant.

40

Answer to Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between MOORE REALTY COMPANY, Inc., <i>Appellant,</i> —and— JACOB HOLDMAN, HENRY TANNENBERG AND LOUIS SPIEGEL, <i>Respondents.</i>	On Bill, etc., On Appeal from the Court of Chancery Answer to Petition of Appeal
----	---	---

20 The answer of Jacob Holdman, Henry Tannenberg and Louis Spiegel, the above named respondents, to the petition of appeal of Moore Realty Company, Inc., the above named appellant.

30 These respondents, not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto, nevertheless, admit that a final decree was, on the 7th day of December, 1927, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purpose in said petition mentioned and as therein set forth; but as to substance and form of said decree, these respondents beg leave to refer thereto when the same shall be produced.

These respondents are advised and believe that the said final decree, dated the 7th day of December, 1927, is agreeable to equity, and they pray that the same may be affirmed with costs to be taxed in favor of these respondents.

40 WILLIAM GREENFIELD,
Solicitor for and of Counsel with Respondents.

Bill of Complaint
~~Answer to Petition of Appeal~~

IN CHANCERY OF NEW JERSEY

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

The complainant, Moore Realty Co., Inc., a corporation of the State of New Jersey, having its principal office in the City of Newark, Essex County, and State of New Jersey, respectfully shows that: 10

1. The complainant, Moore Realty Co., Inc., through its president, Rose Moore, did on March 19th, 1926, enter into a contract with Jacob Holdman and Henry Tannenberg to purchase of them certain land and premises situated and known as 47-49-51 West Street, of the City of Newark, Essex County, and State of New Jersey, for the sum of \$35,000. 20

2. That on July 6th, 1926, it was represented to the complainant through its president, Rose Moore, that they, the said Jacob Holdman and Henry Tannenberg, had procured a building and loan mortgage on the said premises for and in behalf of the said complainant in the sum of \$30,000, which left a balance due for your complainant to pay to the said Jacob Holdman and Henry Tannenberg the sum of \$5,000, but that the said Jacob Holdman and Henry Tannenberg, together with one Louis Spiegel, an attorney at law of the State of New Jersey, who was representing your complainant, stated to your complainant that there were fees and expenditures in the sum of \$3,170 towards the procuring of the said building and loan mortgage and that there would be due upon crediting the said \$30,000 as mortgage, the sum of \$8,170, for which amount your complainant, through Rose Moore, agreed to execute to them, 30 40

6
Bills of Complaint
Answer to Petition of Appeal

the said Jacob Holdman and Henry Tannenberg, a mortgage in the sum of \$8,170, all of which was contrary to all the terms, covenants and agreements as set forth in said agreement to purchase.

10 3. Your complainant, through Rose Moore, its president, placing implicit trust and confidence in him, the said Louis Spiegel, its attorney, believed all of the statements as stated by him and the said Jacob Holdman and Henry Tannenberg and did on the said July 6th, 1926, enter into a memorandum of agreement styled and set forth "Between Louis Spiegel, trustee; Jacob Holdman and Henry Tannenberg, party of the second part, and Moore Realty Co., party of the third part," which contract is hereto
20 annexed and marked "Exhibit A," and it was therein agreed that inasmuch as your complainant had received a deed in the conveyance of certain lands and premises situated and known as 47-49-51 West Street, Essex County, Newark, and State of New Jersey, from the said Jacob Holdman and Henry Tannenberg and that your complainant had executed a mortgage in the sum of \$8,170 to them and said Jacob Holdman and Henry Tannenberg and that because of certain expenditures that were made by them in procuring and obtaining a building and
30 loan mortgage in the sum of \$30,000 with the Peace Building and Loan Association and that the expenditures totaled \$8,170, and that your complainant was unable to pay said sum of money at the closing of title then and there agreed between them that the deed of your complainant and the mortgage which was given by it to Jacob Holdman and Henry Tannenberg that the deed of your complainant to Jacob Holdman and Henry Tannenberg was to remain in escrow with the said Louis Spiegel, as trustee, and
40 to be delivered by him to your complainant when

7
Bills of Complaint
Answer to Petition of Appeal

certain conditions as set forth in the agreement "Exhibit A" were fully complied with.

4. That among the conditions set forth in the said "Exhibit A" your complainant was to take possession of the premises immediately and to collect rents, pay taxes, water bills, and make necessary repairs, and pay monthly installments to the Peace Building and Loan Association and keep an account of such income and expenditures; and that your complainant in compliance therewith did immediately take possession of said premises and collected said rents, and profits and pay monthly installments to the said building and loan association and keep an account of said income and expenditures for about five months when, without notice or reason to your
10 said complainant, the said Louis Spiegel, Henry Tannenberg and Jacob Holdman, notified the tenants of your complainant in and to her said premises to desist and cease from paying any further rent and rents and enjoining the tenants not to further recognize your complainant as the owner of said premises nor its president, Rose Moore, and that in the future all rents in and to said premises should be paid to them, the said Louis Spiegel, Jacob Holdman and Henry Tannenberg, all of which is in total disregard to the terms and conditions of said agreement "Exhibit A."
20 30

5. The complainant charges that the said Louis Spiegel, acting in concert with Jacob Holdman, Henry Tannenberg and conspiring each with the other to cheat and defraud your complainant out of said property and with that intendment and purpose did enjoin the tenants of your complainant and warned them not to further recognize your complainants as the owner of said premises and they
40

10 did then and there together collect the said rents and profits from your complainants premises since the month of September, 1926, to the present time at the rate of \$365 per month without accounting to your complainant or its president, Rose Moore, for all of the said rents, issues and profits so obtained from your complainant's property in total disregard of the said agreement, "Exhibit A," withall, that your complainant was not in default with any of the terms of said agreement.

20 6. That in and by said agreement the said trustee, Louis Spiegel, makes himself the person to have the sole discretion of determining if whether or not the provisions of the said agreement "Exhibit A" have been complied with or breached, which is Section No. 7 of said Agreement, which reads as follows:

30 "The parties hereto further agree that the trustee shall have the sole discretion of determining whether or not the provisions of said agreement have been complied with or breached and the Trustee agrees to forward five days' notice to the parties hereto, by registered mail, of his intention to declare the provisions of this agreement either complied with or breached. In the event the Trustee shall determine that the party of the third part has breached the conditions hereinbefore set forth, then and in that event all improvements that have been made, all monies paid to the Peace Building and Loan Association, whether or not said monies are in excess of expenditures, shall vest in the party of the Second Part and be considered as rental for the period said party of the third part has occupied the premises."
40

and your complainant charges the truth to be that it is not guilty of any breach but has fully complied with all the terms and provisions of said agreement and that the said Louis Spiegel, an attorney at law of this State, together with the said Jacob Holdman and Henry Tannenberg, well knowing that your complainant and its president, Rose Moore, were not guilty of any breach of said terms of said contract, did on July 8th, 1927, forward a letter, a copy of which is hereto annexed and marked "Exhibit B," through the said Louis Spiegel, stating that he is declaring the provisions of the agreement entered into between the Moore Realty Co., Inc., your complainant, Jacob Holdman and Henry Tannenberg as breached by reason of your complainant having failed to perform, and he, the said Louis Spiegel, the trustee, was returning the papers to Messrs. Jacob Holdman and Henry Tannenberg in accordance with the terms of the trustee's agreement, all of which is contrary to equity and good conscience and done in the futherance of their scheme to cheat and defraud your said complainant in endeavoring to divest your said complainant of its title to said premises so that the title may remain solely in the name of the said Jacob Holdman and Henry Tannenberg and so that the title will continue to vest in them in total disregard of the rights of your complainant in the premises.

8. Your complainant charges the truth to be that the said Louis Spiegel, Jacob Holdman and Henry Tannenberg have agreed to and among themselves and have agreed to contract with one Mary Synnesthvet, to sell the premises to her for and in consideration of the sum of \$32,000, without consulting your complainant, and that the said Jacob Holdman and Henry Tannenberg have contracted

10
Bill of Complaint
Answer to Petition of Appeal

some time in the month of June, 1927, with the said Mary Synnesthvet to convey the said premises to her and thereafter they did send a notice in the month of July, 1927, so that your complainant may not have any rights in and to the said premises, contrary to the terms and provisions of said agreement.

10
9. Your complainant charges the truth to be that at no time was any installment due to the Peace Building and Loan Association allowed to remain unpaid for a period of thirty days, nor the taxes for sixty days while she was in possession thereof and collecting the rents, and that the said Louis Spiegel, Henry Tannenberg and Jacob Holdman have prevented your complainants from complying with Paragraph 4 of said agreement, which reads as follows:

20
30
"The deed to the Moore Realty Co., Inc., shall be delivered to it by the trustee only when the installments to the Peace Building and Loan Association shall have been paid regularly for a period of two years, it being the intention of the parties hereto that the Moore Realty Co., Inc., shall have paid on account of the Building and Loan back shares an amount equal to the expenses which it is, at the present time unable to pay, namely, \$3,170,"

40
for the fact remains that the said Louis Spiegel, Jacob Holdman and Henry Tannenberg have collected the sum of \$365 per month since September, 1926, which is ten months up to the filing of this bill of complaint, the sum of \$3,650 and that if your complainant had been permitted to continue to collect the rents the sum of \$3,170 would have

11
Bill of Complaint
Answer to Petition of Appeal

been fully paid thereon and in fact your complainant states that if all the rents, issues and profits collected by them, Louis Spiegel, Jacob Holdman and Henry Tannenberg, were collected for and in behalf of your complainant and that as its trustees they must account to your complainant for all monies paid to the Peace Building and Loan Association and what has been paid out for expenditures and by so doing your complainant insists that all the rents, issues and profits collected by them more than paid up the said sum of money, but so it is that the said Louis Spiegel, Jacob Holdman and Henry Tannenberg, combining and confederating together to cheat and defraud your complainant out of the issues, rents and profits of said property and the title in and to said premises, have for themselves and for their own personal lucre and gain collected all of the rents, issues and profits in and to said premises and refused, have refused and still refuse to account to your complainant for the same and to deliver to your complainant the deed to said premises held in escrow by the said trustee, and are now attempting and in fact have contracted with the one Mary Synnesthvet to sell and convey said premises to her for their own lucre and gain, and totally disregarding said provisions of trustee agreement, "Exhibit A," hereto annexed, and they, Louis Spiegel, Jacob Holdman, Henry Tannenberg, combining and confederating each and with the other did on July 8th, 1927, write a letter to the complainant in the care of Rose Moore, its president, as heretofore stated, in order to declare your complainant's rights as being forfeited in and to said property and to foreclose it from any rights therein withal complainant had complied with the terms of said agreement, all of which is contrary to equity and good conscience

10

20

30

40

and your complainant's rights to the premises.

10. Your complainant further states and charges that the said Louis Spiegel, who is a trustee in "Exhibit A," was its attorney with whom there was the relationship of attorney and client, that any act or transaction done by the said Louis Spiegel as its attorney should have been fair, honest and reasonable and that the said Louis Spiegel, Jacob Holdman and Henry Tannenberg, in order to gouge your complainant and force it to a position of impecunity, placed a charge for fees, services and disbursements of \$3,170 against your complainant and added into the \$5,000, sum due on mortgage totalling the sum of \$8,170, which the said Jacob Holdman and Henry Tannenberg ho ldunder agreement, and which charge is wholly unreasonable, exhorbitant and unjust, and contray to equity and good conscience, but so it is that the said Louis Spiegel, combining and confederating with the said Jacob Holdman and Henry Tannenberg to cheat and defraud your complainant of the sum of \$3,170, enhanced the amount supposed to be due upon said second mortgage, so as to read \$8,170 instead of \$5,000, and claiming that the difference of \$3,170 was for services and disbursements in connection with procuring and obtaining the said \$30,000 building and loan from the Peace Building and Loan Association, your complainant further charges the truth to be that the sum of \$5,000 is to be the second mortgage with no other charges to be added thereon.

Your complainant is without adequate remedy in the courts of law and therefore prays:

1. That Louis Spiegel, Jacob Holdman and Henry Tannenberg, who are the defendants in this suit,

may answer this bill of complaint and each statement therein made.

2. That the said defendants, Louis Spiegel, Jacob Holdman and Henry Tannenberg, may be ordered and decreed to make full and true discovery and disclosure of all the rents, issues and profits and monies received by them, and of all receipts and expenditures made by them in connection with the said property.

3. That the said defendants, Louis Spiegel, Jacob Holdman and Henry Tannenberg, may be ordered and decreed to account to the complainant for all said monies and to pay to the complainant the same as found to be due her on such accounting.

4. That the defendants, Louis Spiegel, Jacob Holdman and Henry Tannenberg, may be ordered and decreed to deliver the deeds held in escrow by defendant, Louis Spiegel, or either one of the defendants who may have the same in their possession.

5. That the defendants, Louis Spiegel, Jacob Holdman and Henry Tannenberg, may be ordered and decreed to be restrained from conveying the aforesaid premises to any person or persons.

6. That the said agreement, "Exhibit A," hereto annexed, be enforced against the said defendants and that the said defendants, Louis Spiegel, Jacob Holdman and Henry Tannenberg, may be ordered and decreed to comply with the said agreement, "Exhibit A."

7. That your complainant be decreed to be the owner of said property and that the mortgage of

14
Bill of Complaint
~~Answer to Petition of Appeal~~

\$8,170 to be held under agreement by Jacob Holdman and Henry Tannenberg, said mortgage to be decreed to be unreasonable, unjust and exorbitant and the true just due and reasonable amount be substituted.

10 8. That a writ of subpoena may issue commanding said defendants, Louis Spiegel, Jacob Holdman and Henry Tannenberg, to answer this bill of complaint and to abide by such order and decree as this court may deem equitable and just.

LOUISE RUTH SHAPIRO,
Solicitor and of Counsel with Complainant.

20

30

40

Exhibits

"EXHIBIT A."

MEMORANDUM made this 6th day of July, 1926, between LOUIS SPIEGEL of the City of Newark, Essex County, New Jersey, hereinafter called the Trustee, party of the first part; JACOB HOLDMAN and HENRY TANNENBERG of the City of Newark, Essex County, New Jersey, party of the second part, and MOORE REALTY COMPANY, Inc., a New Jersey corporation, party of the third part:

WHEREAS, by an Indenture bearing even date with these presents the party of the second part conveyed certain lands and premises situated at Nos. 47-49-51 West Street, Newark, Essex County, New Jersey, to the Moore Realty Co., Inc., and the said Moore Realty Co., Inc., executed a mortgage in the sum of \$8,170.00 to the party of the second part, which deed and mortgage were executed in accordance with the contract entered into on the 19th day of March, 1926, between the party of the second part and Rose Moore; and

WHEREAS, certain expenditures have been made by the party of the second part for the obtaining of the building and loan mortgage with the Peace Building and Loan Association in the sum of \$30,000, which expenditures total the sum of \$8,170, and since the party of the third part agreed to pay said amount at the closing of title and is unable to do so at this time,

NOW, THEREFORE, this agreement, WITNESSETH:

That in consideration of the premises and for other good and valuable consideration from each to

Exhibits

the other moving, the parties hereto mutually agree upon the covenants hereinafter contained to-wit:

10 1. That the deed and mortgage above mentioned shall remain in escrow with Louis Spiegel, Trustee, to be delivered to the party of the third part only when the conditions hereinafter set forth have been fully complied with.

20 2. The party of the third part shall take possession of the premises immediately upon execution of this agreement, collect rents, pay taxes, water bills, make the necessary repairs and pay the monthly installments to the Peace Building and Loan Association, and keep an account of such income and expenditures.

30 The party of the third part agrees that if any one installment to the Peace Building and Loan Association shall remain unpaid for a period of thirty days, or taxes be unpaid for sixty days then and in that event, possession of the premises shall be relinquished to the party of the second part, or at the option of the party of the second part, shall continue to remain in possession of said premises upon payment to the said party of the second part of a monthly rental of \$400; said Moore Realty Co., Inc., shall, in that event, be a monthly tenant and entitled only to the rights and privileges of such a tenancy.

40 4. The deed to the Moore Realty Co., Inc., shall be delivered to it by the Trustee only when installments to the Peace Building and Loan Association shall have been paid regularly for a period of two years, it being the intention of the parties hereto

Exhibits

that the Moore Realty Co., Inc., shall have paid on account of the Building and Loan back shares an amount equal to the expenses which it is, at the present time, unable to pay, namely, \$3,170.

10 5. It is also stipulated and agreed that in the event that the said party of the third part sells the premises above mention, then and in that event upon payment to the party of the second part of the sum of \$3,170, said deed shall be delivered to the Moore Realty Co., Inc., and the mortgage reduced in a similar amount, shall be placed on record.

20 6. It is also understood and agreed by the parties hereto that title shall continue to vest in the party of the second part until the fulfillment of he provisions above set forth and until said Trustee delivers the deed to the party of the third part.

30 7. The parties hereto further agree that the Trustee shall have the sole discretion of determining whether or not the provisions of said agreement have been complied with or breached, and the Trustee agrees to forward five days' notice to the parties hereto, by registered mail, of his intention to declare the provisions of this agreement either complied with or breached. In the event the Trustee shall determine that the party of the third part has breached the conditions hereinbefore set forth, then and in that event, all improvements that have been made, all moneys paid to the Peace Building and Loan Association, whether or not said moneys are in excess of expenditures, shall vest in the party of the second part and be considered as rental for the period said party of the third part has occupied the premises.

Exhibits

10 IN WITNESS WHEREOF, the party of the first part has hereunto affixed his hand and seal, and the party of the second part have affixed their hands to be signed by its president and attested by its secretary and its corporate seal to be hereunto affixed the day and year first above mentioned.

LOUIS SPIEGEL,
a Trustee.

JACOB HOLDMAN,
HENRY TANNENBERG,
MOORE REALTY CO., INC.
Rose Moore, President.

20 Attested:
HETTY J. GREENBAUM,
Ass't. Secretary.

30

40

Exhibits

"EXHIBIT B."

LOUIS SPIEGEL
20 Branford Place
Newark, N. J.

July 8, 1927. 10

Moore Realty Co., Inc.,
% Mrs. Rose Moore,
90 Spruce Street,
Newark, New Jersey.

Dear Madam:

In accordance with my letter of June 30th, 1927, I am hereby declaring the provisions of the agreement entered into between the Moore Realty Co., Inc., and Jacob Holdman and Henry Tannenberg as breached by reason of your having failed to perform. 20

I am this day returning the papers to Messrs. Holdman and Tannenberg in accordance with the terms of the Trustee's agreement.

Very truly yours,
(Sgd.) LOUIS SPIEGEL.

S:M 30
REGISTERED MAIL,
RETURN RECEIPT REQUESTED.

40

On Bill, Answer of Defendants

IN CHANCERY OF NEW JERSEY.

10	Between MOORE REALTY COMPANY, Inc., <i>Complainant,</i> —and— JACOB HOLDMAN, HENRY TAN- NENBERG AND LOUIS SPIEGEL, <i>Defendants.</i>	On Bill, etc. ANSWER OF HENRY TAN- NENBERG and JACOB HOLD- MAN.
----	---	--

20 The defendants, herein residing in the City of Newark, County of Essex, and State of New Jersey, answering the complainant's bill of complaint, say:

1. These defendants answering paragraph 1 of the complainant's bill of complaint admit the allegations therein set forth.
2. Answering paragraph 2 of the complainant's bill of complaint, these defendants, Henry Tannenberg and Jacob Holdman, admit the allegations therein set forth.
- 30 3. These defendants, answering paragraph 3 of the complainant's bill of complaint, answering so much of said paragraph wherein it avers that the said Rose Moore, president of the Moore Realty Co., Inc., placed its trust and confidence in the said Louis Spiegel, its attorney, these defendants have no knowledge, information or belief as to what confidence it placed in its said attorney, but leaves the complainant to prove the same.

40

On Bill, Answer of Defendants

And further answering said paragraph wherein it avers that the said complainant entered into a memorandum of agreement styled and set forth "Between Louis Spiegel, Trustee; Jacob Holdman and Henry Tannenberg, party of the second part, and Moore Realty Co., Inc., party of the third part," and which memorandum of agreement is annexed to the complainant's bill of complaint and marked "Exhibit A," these defendants admit that such an agreement was entered into and entered into with good faith and knowledge of the contents, conditions and terms explained and discussed and thereafter agreed to by the said Rose Moore, as president of the said Moore Realty Co., Inc., and did execute said agreement by and between the said Moore Realty Co., Inc., and these defendants, all of which facts set forth in said agreement are true, and that the said defendants were always ready, willing and anxious and do hereby tender themselves ready to perform, comply and carry out all its terms in said memorandum of agreement marked "Exhibit A" whenever and whensoever at any time that the court shall direct, and that the said Moore Realty Co., Inc., shall be ready and willing to pay the money due and owing these defendants in accordance with the terms of the said memorandum of agreement.

And these defendants, further answering paragraph 3 of the complainant's bill of complaint, aver and in fact say that the said complainant was never ready, willing or anxious to carry out the said agreement, but on the contrary breached the terms of said agreement immediately upon the execution thereof, in that it has collected the rents, issues and profits, and failed, refused and neglected to pay the monthly building and loan installments on the building and loan mortgage, and failed, refused and neg-

10

20

30

40

On Bill, Answer of Defendants

10 lected to pay taxes, insurance and other assessments against the property, as it was obliged and obligated to do so, and by reason thereof these defendants were obliged to and did pay the building and loan monthly payments, taxes, insurance and other assessments against said property, and by reason thereof these defendants exercised their rights given by the terms of said agreement and repossessed themselves of the property described in said agreement.

20 4. Answering paragraph 4 of the complainant's bill of complaint, these defendants admit so much of said allegation in said paragraph wherein it avers that among the conditions set forth in said "Exhibit A" the complainant was to take possession of the premises immediately and collect the rents, pay taxes, water bills, and make necessary repairs, and pay monthly installments to the Peace Building and Loan Association and keep an account of such income and expenditures, but these defendants aver and say that the said complainant did take possession of the property immediately upon the execution of said agreement and did collect the rents, but that it has failed, neglected and refused to pay the monthly installments due to the Peace Building and Loan Association. That it has failed, neglected and refused to pay taxes, and insurance due on said premises, all of which was contrary to the terms of said agreement, and that these defendants were obliged, in order to prevent foreclosure proceedings by the building and loan association, to pay the said monthly payments, and the defendants demanded the repayment from this complainant of the moneys paid by these defendants to the Peace Building and Loan Association, but that said complainant refused to pay, and by reason whereof the defendants exercised their right and did take possession of the prop-

30

40

On Bill, Answer of Defendants

erty, and have ever since collected the rents, in accordance with the terms of said agreement. That these defendants were and are ready, willing and anxious to carry out the terms of said agreement, and to account for all rents, and expenditures in the management and upkeep of said property, since these defendants took possession thereof. And these defendants have offered and tenderd and hereby offer and tender the deed, requesting the complainant to pay over the moneys due, and the moneys which they have expended, but that the complainant refused and does still refuse to pay the same or any part thereof, or account for the rents and securities collected by the complainant.

10

20 These defendants, futher answering so much of said paragraph 4 wherein it avers that these defendants by and with the said Louis Spiegel notified the tenants of the complainant to desist and cease from paying any further rents and enjoining the tenants not to further recognize the complainant as the owner of said premises nor its president, Rose Moore, aver and in fact say that before these defendants notified the said tenants, due notice and repeated demands were made upon the said complainant to pay over the money expended by these defendants in the monthly payments to the building and loan association and demanded that it pay the taxes then due and owing to the City of Newark, taxed against the lands and premises mentioned and described in the memorandum agreement marked "Exhibit A" and annexed to the complainant's bill of complaint, but that the said complainant refused to recognize their demands and requests and refused to pay any of the said monthly payments paid by these defendants, and failed and refused to pay the note dated March 16, 1926, for \$400, due one month

30

40

On Bill, Answer of Defendants

after its date, of which the said complainant had due notice, of which notices true copies are hereto annexed and marked Exhibits "A," "B," "C" and "D," and made part of this answer, but that the said complainant has totally ignored the requests and demands of these defendants, by reason thereof they exercised their right under the terms of the agreement and repossessed themselves of the property, mentioned and described in the memorandum agreement marked "Exhibit A" and annexed to the complainant's bill of complaint.

And these defendants, further answering paragraph 4 of the complainant's bill of complaint wherein it avers that these defendants, Jacob Holdman and Henry Tannenbergh, have totally disregarded the terms and conditions of said agreement "Exhibit A," but aver and in truth say that the complainant has totally ignored the terms of said agreement although repeated demands were made on it to perform said terms of the agreement.

5. Answering paragraph 5 of the complainant's bill of complaint wherein it avers that these defendants, acting in concert with Louis Spiegel, conspired each with the other to cheat and defraud the complainant out of the property, these defendants deny each and every allegation therein set forth. As to the allegation that these defendants enjoined the tenants of the complainant not to further recognize the complainant as the owner of said premises, these defendants admit, but that defendants enjoined the said tenants only after the said complainant had breached the terms of the trust agreement marked "Exhibit A" and annexed to the complainant's bill of complaint, and by reason thereof these defendants have collected the rents, issues, and profits from said

On Bill, Answer of Defendants

premises, but these defendants aver, and in fact say that they were and are ready and willing and tender themselves to convey the said premises and account for the rents collected, upon payment by the complainant of the amount found to be due to these defendants.

6. And these defendants, answering paragraph 6 of the complainant's bill of complaint, wherein it avers that in and by said agreement, the said Trustee, Louis Spiegel, makes himself the person to have the sole discretion of determining if whether or not the provisions of said agreement "Exhibit A" have been complied with, these defendants say that the said complainant has agreed to all its terms and thereby the said complainant made the said Louis Spiegel the sole arbiter for the determining of any breach that the said complainant shall or may make, and which the said Louis Spiegel did assume his right, and by reason thereof these defendants did exercise their right and took possession of the property, and are collecting the rents and paying all the necessary expenditures, such as the monthly building and loan installments to the Peace Building and Loan Association, and other moneys necessary to the upkeep of said property as described in the memorandum agreement marked "Exhibit A" and annexed to the complainant's bill of complaint.

And these defendants deny that they have acted in total disregard of the complainant, but on the contrary aver, and in fact say that they have offered and do hereby offer themselves, ready and willing to perform the terms of the memorandum of agreement marked "Exhibit A," but that the said complainant refused to comply therewith.

On Bill, Answer of Defendants

8. Answering paragraph 8 of the complainant's 6 of the complainant's bill of complaint, wherein it said Louis Spiegel has any interest or had any interest in the agreement made by and between these defendants and with one, Mary Synnesthvet, to sell the premises to her for and in consideration of the sum of \$32,000, but on the contrary these defendants say that they have made said agreement, but that the said Mary Synnesthvet is ready to release and relinquish the said agreement when the said complainant shall perform the terms of the agreement and pay the consideration money therefore in accordance with the said agreement.

And these defendants tender themselves ready to convey the said land and premises to the complainant upon the performance of the terms of the contract on its part.

9. And these defendants deny so much of paragraph 9 of the complainant's bill of complaint wherein it avers that there was no monthly installment marked "Exhibit A" and annexed to the Loan Association, who held a mortgage on the land and premises described in the memorandum agreement marked "Exhibit A" and annexed to the complainant's bill of complaint.

And these defendants admit so much of paragraph 9 wherein the complainant avers that it, the complainant, has taken possession of the land and premises and collected the rents, issues and profits therefrom immediately upon the entering of said agreement, but these defendants aver and say that during the period complainant collected the rents, issue and profits, it has failed, neglected and refused to pay the monthly installments due to the building

On Bill, Answer of Defendants

and loan association on its said mortgage and failed and neglected to pay water bills, and to pay the \$400 note due in compliance with the terms of said memorandum agreement, but on the contrary these defendants aver and say that all rents, issues, and profits, the complainant collected, it has converted to its own use without right and authority and contrary to the terms and conditions of the agreement marked "Exhibit A" and annexed to the complainant's bill of complaint.

10. Answering paragraph 10 wherein it avers that these defendants, in order to gouge the complainant and force it to a position of impecunity, placed a charge for fees, services and disbursements of \$3,170 against the complainant and added it to the \$5,000 due on the mortgage. These defendants deny each and every allegation, but on the contrary, these defendants aver that all of the charges were reasonable and necessary in procuring the loan and agreed to, which said sum said complainant agreed to pay.

Wherefore, these defendants pray that the said bill of complainant in this cause be dismissed, with cost and a counsel fee to be taxed against the complainant.

COUNTER-CLAIM

And these defendants, by way of a counter-claim against the complainant, the Moore Realty Co., Inc., these defendants say that:

1. On or about the 19th day of March, 1926, a certain agreement was entered into by these defendants with one Rose Moore for and in behalf of the complainant company for the sale of the land and

On Bill, Answer of Defendants

premises known and designated as Nos. 47-49-51 West Street, in the City of Newark, County of Essex, and State of New Jersey, for the purchase price of \$35,000, and which the said defendants agreed to obtain a loan of some building and loan association in the sum of \$30,000 at the costs and expense of the said complainant, and that the complainant covenanted and agreed to execute a bond and mortgage second and subsequent in priority to the said building and loan mortgage to secure the payment on the land and premises therein described, which said second mortgage to be for the difference between the amount of the building and loan mortgage and the amount of the purchase price for a period of three years from the date of the execution thereof with interest at 6 per cent per annum, payable semi-annually, containing the usual tax, interest, and insurance clauses, and under said terms of the contract the said complainant agreed to pay in cash on date of settlement all expenses and costs in obtaining said mortgages, including premiums, search fees, and other expenses necessary thereto.

2. That thereafter the complainant and these defendants entered into a supplemental memorandum agreement bearing the date, the 6th day of July, 1926, which is marked "Exhibit A" and annexed to the complainant's bill of complaint, and under and by virtue of said agreement the said complainant entered into possession of said land and premises and thereby collected the rents, issues and profits therefrom, out of which it agreed to pay taxes, insurance, water rents, and monthly installments to the building and loan association on the said mortgage of \$30,000, in accordance with the terms of said mortgage, and rules of said building and loan association.

On Bill, Answer of Defendants

3. That the complainant, although collecting the rents, issues and profits in accordance with the terms of the agreement, has failed, refused and neglected to pay any of the monthly installments to the Peace Building and Loan Association, and has failed, refused and neglected to pay insurance, water rents, and taxes, and by reason thereof breached the terms of said contract.

4. That the said complainant be directed within a certain time limited by the decree of this court to accept title to the land and premises mentioned and described in the agreement bearing the date, the 19th day of March, 1926, and the supplemental agreement thereto bearing date, the 6th day of July, 1926, and these defendants hereby offer and tender themselves ready to account for all rents collected by these defendants since these defendants have repossessed themselves of the property mentioned and described in said agreement, by virtue of the breach of the terms of said contracts on the part of the complainant, and if any moneys are found to be due to the complainant these defendants offer themselves ready and willing to pay such sum or sums, and these defendants further pray that if any moneys are found to be due to the defendants herein from the complainant that a decree may be entered for any such sum or sums that shall be found to be due in favor of the defendants and against the complainant.

5. That these defendants demanded an accounting of the rents, issues and profits from the said complainant, but that the said complainant refused and still does refuse to account.

These defendants are without adequate remedy in the Court of Law and can only have relief in the Court of Equity.

On Bill, Answer of Defendants

Wherefore, these defendants pray that the said complainant, the Moore Realty Co., Inc., may answer this counter-claim and each statement therein made without oath.

10

WM. GREENFIELD,
Solicitor for and Counsel with Defendants,
Jacob Holdman and Henry Tannenberg.

20

30

40

Exhibits

January 25, 1927.

To:

Moore Realty Co., Inc.,
% Mrs. Rose Moore,
20 Waverly Avenue,
Newark, New Jersey.

10

Gentlemen:

I have been informed that you have breached the provisions of an agreement entered into between you, Jacob Holdman and Henry Tannenberg, in that you have failed to pay the monthly installments to the Peace Building and Loan Association for more than thirty days, and that you have failed to pay taxes for more than sixty days. Messrs. Holdman and Tannenberg have informed me that they desire to take advantage of their option permitting them to take possession of the said premises.

20

I must therefore advise you that unless the taxes are paid and the building and loan brought to date no later than February 4th, 1927, I shall, upon that date, return the deed to Messrs. Holdman and Tannenberg in accordance with the terms and provisions of said agreement.

30

Very truly yours,

(Signed) LOUIS SPIEGEL.

as Trustee.

LS:C

REGISTERED MAIL

40

Exhibits

February 7, 1927.

To:

Moore Realty Co., Inc.,
% Mrs. Rose Moore,
20 Waverly Avenue,
Newark, New Jersey.

10

Gentlemen:

On January 25, 1927, I forwarded you a notice, in accordance with the agreement entered into between yourself, Moore Realty Co., Inc., Jacob Holdman and Henry Tannenberg, and myself as Trustee.

20

Your failure to pay the monthly installments to the Peace Building and Loan Association, your failure to pay taxes and insurance and interest on the second mortgage had caused Messrs. Holdman and Tannenberg to request that these items be paid not later than February 4th, 1927.

30

Your failure to make the payments in accordance with that notice makes it necessary for me, as Trustee, to inform you that since you have violated the provisions of the agreement above referred to, that I am delivering the title to the property back to Jacob Holdman and Henry Tannenberg, who demand immediate possession of the premises.

Very truly yours,

(Signed) LOUIS SPIEGEL,
as Trustee.

LS:C

REGISTERED MAIL

40

Exhibits

June 30, 1927.

Moore Realty Co., Inc.,
% Mrs. Rose Moore,
90 Spruce Street,
Newark, New Jersey.

Dear Madam:

10

In accordance with the agreement entered into on the 6th day of July, 1926, between the Moore Realty Co., Inc., and Jacob Holdman and Henry Tannenberg, covering premises at Nos. 47-49-51 West Street, Newark, N. J., please take notice that in accordance with the terms of said agreement, I am herewith forwarding you five days' notice of my intention to declare the provisions of the agreement as having been breached, unless, within that time, you conform with the terms and conditions of said agreement.

20

Very truly yours,

(Signed) LOUIS SPIEGEL,
as Trustee.

LS:C

REGISTERED MAIL

30

40

On Bill, Answer of Louis Spiegel

and appertaining thereto, and did execute a bond and mortgage in the sum of \$5000, and on the day and date of closing title the said complainant not having any cash to pay, by reason thereof the memorandum agreement marked Exhibit "A" was entered into, wherein and whereby the complainant agreed to
 10 keep and perform and agreed to add the said expense as part of the said mortgage herein mentioned.

And this defendant further answering Paragraph 2, says that he had been informed by the said Jacob Holdman and Henry Tannenberg, that they had procured a loan of \$30,000 from the Peace Building and Loan Association, and that the sad complainant would be obliged to and that said complainant
 20 agreed to pay all the necessary expenses appertaining thereto, such as bonuses to the building and loan association, search fees, and other expenses involved therein, and appertaining thereto, and that the total sum amounted to \$3,170 and that she, the said Rose Moore, for and in behalf of the Moore Realty Co., Inc., agreed in writing to pay the said sum of money, all of which conditions were explained in detail to the said Rose Moore, president and who acted for said complainant company.

30 3. Answering Paragraph 3 of the complainant's bill of complaint, this defendant admits each and every allegation therein set forth, except so much of said paragraph wherein the said complainant avers that it had fully complied with all terms, conditions, and undertaking set forth in Exhibit "A," whereby and wherein the said complainant agreed to perform, but on the contrary, this defendant avers that the
 40 said complainant has breached each and every one of the terms, conditions, covenants, therein agreed

On Bill, Answer of Louis Spiegel

by it to perform in the purchase of said land and premises, and has redelivered the deed held by this defendant in escrow in accordance with the terms of said agreement, and has tendered to deliver to the complainant the said bond and mortgage executed by the complainant to the defendants, Jacob Holdman and Henry Tannenberg, given to secure the sum
 10 of \$8,170.

4. Answering Paragraph 4, this defendant admits so much of said paragraph wherein it avers that among the conditions set forth in said Exhibit "A," the complainant was to take possession of the premises immediately and to collect the rents, pay taxes, water bills, and make necessary repairs, and pay monthly installment to the Peace Building
 20 and Loan Association, and to keep an account of such income and expenditures; and that it had taken immediate possession of the premises and that it had collected the rents, issues, and profits but this defendant denies that it has paid the monthly installments to the said building and loan association, as to whether it has kept an account of the expenditures, and income, this defendant has no knowledge or information to form any belief, but leaves the complainant to prove the same.

30 Further answering Paragraph 4 of the complainant's bill of complaint, wherein it avers that this defendant notified the tenants of the complainant, in and to her premises to desist and cease from paying any further rents, this defendant denies each and every allegation. If any such notices were served, it was served by the defendants, Henry Tannenberg and Jacob Holdman, and not by this defendant.
 40

On Bill, Answer of Louis Spiegel

Further answering said paragraph wherein it avers that this defendant has done anything wherein and whereby this defendant has disregarded his obligations and duties to the said complainant, and totally disregarded the terms and conditions of said agreement, but on the contrary, avers that he has notified the complainant of his intention to surrender and turn over the deed to the complainant and turn over the bond and mortgage signed by it and given to secure the sum of \$8,170, in accordance with the terms of Exhibit "A," annexed to the complainant's bill of complaint.

5. Answering Paragraph 5, this defendant denies each and every allegation therein set forth, but on the contrary, avers and in fact says that this defendant repeatedly requested the complainant to fulfill all the terms of the memorandum agreement marked Exhibit "A" and attached to the complainants' bill of complaint, which the said complainant totally disregarded and refused to comply with same.

6. This defendant admits that he made himself the person to have the sole discretion of determining if whether or not the provisions of said agreement Exhibit "A" have complied with or breached, which is Section No. 7 of said agreement, and that he acted strictly in accordance with the terms thereof and therein. In addition thereto, this defendant has notified (of which notices true copies are hereto annexed and made part of this answer) requesting it, the complainant, to comply with all the terms agreed upon, and after repeated notices and requests, the complainant disregarding the said defendant, in accordance with the terms of Exhibit "A," Section No. 7 of said agreement, this defendant has surrendered the deed to the defendants, Henry Tannenberg and Jacob Holdman.

On Bill, Answer of Louis Spiegel

Further answering said paragraph 6 wherein it avers that the complainant was not guilty of any breach, that it has fully complied with the terms of the agreement, this defendant avers that it has wholly neglected to fulfill any of the terms, in that it has collected rents and retained and applied to its own uses and did not pay to the building and loan association on its monthly installments, in accordance with the terms. That it did not pay the taxes for 1926, and 1927, all of which was contrary to the terms of the memorandum agreement marked Exhibit "A" and annexed to the complainant's bill of complaint. This defendant denies each and every other allegation set forth in said paragraph. That his acts and conduct was wholly faithful to his duties to the said complainant as well as to the defendants in accordance with the terms of the trust agreement marked Exhibit "A" and annexed to the complainant's bill of complaint.

8. Answering Paragraph 8 of the complainant's bill of complaint, this defendant denies each and every allegation therein set forth. Denies that this defendant has any interest in the said property or claims to have any interest in the land and premises known and designated as Nos. 47-49-51 West tSreet, Newark, New Jersey, as this defendant was informed and verily believes to be true, said defendants agreed to convey to Mary Synnesthvet.

9. Answering Paragraph 9 of the complainant's bill of complaint, this defendant admits that no installments were due and payable to the Peace Building and Loan Association, by reason of the fact that the said Jacob Holdman and Henry Tannenberg have paid the same, as this defendant was informed by the defendant, Jacob Holdman and Henry Tan-

On Bill, Answer of Louis Spiegel

10 nenberg, after being notified by the said building and loan association of the default made by the complainant in the monthly payments in accordance with the terms and agreements of Exhibit "A" annexed to the complainant's Bill of complaint, and in accordance with the paragraph 4 of said agreement, and thereby breached the terms of said agreement. As to the allegation in said paragraph, that the said Jacob Holdman and Henry Tannenberg, collected the rents, amounting to \$365. a month, this defendant avers and in fact says that he has no interest in the collection of rents and that he has not collected any rents, whatever knowledge this defendant has is on information obtained from the said Rose Moore and the defendant, Jacob Holdman and Henry Tannenberg, and that said property belongs to and is the property of Jacob Holdman and Henry Tannenberg, as this defendant was informed and believes it to be true. That they, Jacob Holdman, and Henry Tannenberg, are ready, willing and offer to convey the said property, and to account for all rents collected and all expenditures made and had in the conduct, operation and upkeep of said property.

30 10. Answering Paragraph 10 of the complainant's bill of complaint, this defendant admits the allegation wherein it avers that this defendant was trustee as set forth in Exhibit "A" that he was acting as its attorney for the complainant as well as for the defendants. And the defendant further answering said paragraph 10 that the acts and transactions done by this defendant as its attorney should have been fair, this defendant avers and in truth say, that all he has done concerning the transactions and business relative to the memorandum agreement for
40 the property therein mentioned, was fair, honest,

On Bill, Answer of Louis Spiegel

and upright, and that the costs and expenditures, added to the second mortgage was gone over and thoroughly discussed by and with the complainant, its president, Rose Moore. All figures were examined and approved by the said Rose Moore, as President of the said Moore Realty Co., Inc.

10

This defendant denies each and every allegation of any exorbitant and unjust charge, except a reasonable fee allowed which the said complainant has not yet paid to the complainant.

Wherefore this defendant prays that the said Bill of Complaint as to this defendant be dismissed with costs and a reasonable counsel fee taxed against this complainant.

20

WM. GREENFIELD,
Solicitor for and of counsel
with Louis Spiegel.

30

40

Exhibits

January 23 1927.

To:
Moore Realty Co. Inc.,
c/o Mrs. Rose Moore,
20 Waverly Avenue,
Newark, New Jersey.

10

Gentlemen:

I have been informed, that you have breached the provisions of an agreement entered into between you, Jacob Holdman and Henry Tannenberg, in that you have failed to pay the monthly installments to the Peace Building & Loan Association for more than thirty days, and that you have failed to pay taxes for more than sixty days. Messrs. Holdman and Tannenberg have informed me that they desire to take advantage of their option permitting them to take possession of the said premises.

20

I must therefore advise you that unless the taxes are paid and the Building and Loan brought to date no longer than February 4th, 1927, I shall, upon that date, return the Deed to Messrs. Holdman and Tannenberg in accordance with the terms and provisions of said agreement.

30

Very truly yours,

(signed) LOUIS SPIEGEL

LS:C

as Trustee.

REGISTERED MAIL

40

Exhibits

February 7, 1927.

To:
Moore Realty Co. Inc.,
c/o Mrs. Rose Moore
20 Waverly Avenue,
Newark, New Jersey.

10

Gentlemen:

On January 23, 1927, I forwarded you a Notice, in accordance with the Agreement entered into between yourself, Moore Realty Co. Inc. Jacob Holdman and Henry Tannenberg, and myself as Trustee.

Your failure to pay the monthly installment to the Peace Building & Loan Association, your failure to pay taxes and insurance and interest on the second mortgage had caused Messrs. Holdman and Tannenberg to request that these items be paid not later than February 4th, 1927.

20

Your failure to make the payment in accordance with that Notice makes it necessary for me as Trustee, to inform you that since you have violated the provisions of the Agreement above referred to that I am delivering the title to the property back to Jacob Holdman and Henry Tannenberg, who demand immediate possession of the premises.

30

Very truly yours,

(Signed) LOUIS SPIEGEL

LS:C

as Trustee.

REGISTERED MAIL

40

Exhibits

June 30, 1927,

Moore Realty Co., Inc.,
c/o Mrs. Rose Moore,
90 Spruce Street,
Newark, New Jersey.

10 Dear Madam:

In accordance with the agreement entered into on the 6th day of July, 1926, between the Moore Realty Co. Inc., and Jacob Holdman and Henry Tannenberg, covering premises at Nos. 47-49-51 West Street, Newark, N. J., please take notice that in accordance with the terms of said agreement, I am herewith forwarding you five days' notice of my intention to declare the provisions of the agreement as having been breached, unless, within that time, you conform with the terms and conditions of said agreement.

20

Very truly yours,

LS:C

(Signed) LOUIS SPIEGEL

REGISTERED MAIL

as Trustee.

30

40

Exhibits

July 8, 1927.

Moore Realty Co. Inc.,
c/o Mrs. Rose Moore,
90 Spruce Street,
Newark, New Jersey.

Dear Madam:

In accordance with my letter of June 30th, 1927, I am hereby declaring the provisions of the agreement entered into between the Moore Realty Co. Inc., and Jacob Holdman and Henry Tannenberg as breached by reason of you having failed to perform.

I am this day returning the papers to Messrs. Holdman and Tannenberg in accordance with the terms of the Trustee's agreement.

Very truly yours,

S:M

(Signed) LOUIS SPIEGEL

REGISTERED MAIL

as Trustee.

RETURN RECEIPT REQUESTED.

10

20

30

40

Replication and Answer to Counterclaim

IN CHANCERY OF NEW JERSEY.

10	Between MOORE REALTY CO., INC., Complainant, —and— LOUIS SPIEGEL, JACOB HOLDMAN and HENRY TANNENBERG, Defendants.	On Bill, etc. REPLICATION AND ANSWER TO COUNTER- CLAIM.
----	--	---

20 Complainant joins issue to so much of the defendant's answer as is not in the nature of a counterclaim, and as to that part which is a counterclaim, complainant says:

1. It admits the allegations of paragraphs one and two of the counterclaim.
 2. It denies the allegations of paragraphs three.
 3. As to the allegations in paragraph four, complainant denies any right to the defendants as therein pleaded and demanded and insists that it the complainant is entitled to relief demanded by it as
- 30 pleaded and set forth in her bill of complaint filed in this cause and for the causes and reasons therein alleged and pleaded.

LOUISE RUTH SHAPIRO,
 Solicitor and of counsel with
 Complainant.

40

On Bill for Specific Performance. Final Decree

Between MOORE REALTY COMPANY, Inc., Complainant, —and— JACOB HOLDMAN, HENRY TAN- NENBERG AND LOUIS SPIEGEL, Defendants.	ON BILL FOR SPECIFIC PER- FORMANCE, ETC.	10
FINAL DECREE		

IN CHANCERY OF NEW JERSEY.

20 This cause coming on to be heard in the presence of Miss Louise Ruth Shapiro, solicitor for and counsel with complainant, and William Greenfield, Esq., solicitor for and of counsel with defendants, Jacob Holdman, Henry Tannenberg and Louis Spiegel.

30 And pleadings having been read and proofs taken in open court and the arguments of respective counsel having been heard, and the court having duly considered the said pleadings, proofs and argument of the respective counsel for the respective parties.

40 And it appearing to the court that the bill filed by the complainant in this cause, praying that the defendants specifically perform the contracts made and entered into by and between the complainant and he defendants, Jacob Holdman and Henry Tannenberg, for the purchase and sale of the land and premises known and designated as Nos. 49-51 West Street, in the City of Newark, County of Essex, and State of New Jersey, for the sum of

On Bill for Specific Performance. Final Decree

\$35,000, and which said sum the said complainant undertook and agreed to pay in addition to the sum of \$3,170 as costs and disbursements for the procuring of a loan in accordance with the agreements bearing date March 19, 1926, and July 6th, 1926.

10

And it appearing to the court from the proofs in open court that the complainant was not willing, and refused to perform specifically the terms of said contract, agreed to buy it, for the purchase of said property, more specifically set forth and described in the bill of complaint filed by the complainant, and which contract is recorded in the Register's Office of the County of Essex in Book A-76 of deeds for said county, on page 598.

20

And it further appearing to the court that the defendants, Jacob Holdman and Henry Tannenberg, were ready, willing, and able and tendered themselves, ready and willing to perform said contract, and convey the land and premises mentioned, specified and agreed to in said contracts, upon the complainant performing the terms undertaken and agreed to by it, and pay the consideration therefore in accordance with the terms of said contract.

30

It is therefore on this 7th day of December, 1927, on motion of William Greenfield, Esq., solicitor for and of counsel with defendants, ORDERED, ADJUDGED AND DECREED by the Chancellor by virtue of the power and authority of this court, that the contracts made and entered into by and between the complainant and the defendants for the sale and purchase of said property, which said contracts bear date March 19, 1926, and July 6th, 1926, are hereby declared null and void and of no effect.

40

On Bill for Specific Performance. Final Decree

And it is hereby further ORDERED, ADJUDGED AND DECREED by the Chancellor by virtue of the power and authority of this court, that the said bill of complaint, and bill of complaint be and the same is hereby dismissed as against all of the defendants in the above cause.

10

And it is further ORDERED, ADJUDGED AND DECREED that the Register of the County of Essex be and is hereby directed to enter a cancellation of the Lis Pendens, dated August 3, 1927, and recorded in the Register's Office of the County of Essex in Book K of Lis Pendens for said county, on page 80, and that the bill of complaint be and the same is hereby dismissed with a counsel fee of \$100, allowed to William Greenfield, Esq., of counsel with defendants, with costs to be taxed, which shall include the counsel fee herein allowed.

20

Respectfully advised,
ALONZO CHURCH, V. C.

30

40

Transcript of Testimony

IN CHANCERY OF NEW JERSEY,

November 30, 1927.

Between
 MOORE REALTY Co., INC.,
 10 Complainant,

—and—

LOUIS SPIEGEL, JACOB HOLD-
 MAN and HENRY TANNEN-
 BERG,

Defendants.

20 Transcript of shorthand notes of testimony
 taken in the above entitled cause before his
 Honor, Alonzo Church, Vice Chancellor, at
 the Chancery Chamber, Newark, New Jer-
 sey, in the presence of Louise R. Shapiro, and
 William Azzoli, for complainant; William
 Greenfield for defendant.

MR. AZZOLI: I will call Mrs. Moore.

30 MR. GREENFIELD: Maybe we can dis-
 pose of this very briefly. I appear for the
 defendants. This is a bill filed for specific
 performance. We answer we are ready to
 perform upon the payment of the considera-
 tion contained in the terms of the agreement.

40 MR. AZZOLI: There is more than that
 in the situation. I better explain to your
 Honor, The Moore Realty Company is com-
 posed of two other persons and Mrs. Moore,
 a lady, and she is really the corporation.
 There was some property 47-49-51 West
 Street, in the city of Newark, which was be-
 ing sold by two people, Jacob Holdman and

Transcript of Testimony

Henry Tannenberg, for thirty-five thousand
 dollars. This was on March 19, 1926. An
 agreement was drawn in accordance there-
 with. They proceeded with the negotiations
 and they made certain statements to this
 woman which afterwards were found to be
 untrue. They told her they would procure a
 mortgage of thirty thousand dollars and that
 the balance, they would take back a second
 mortgage. She was represented by a lawyer,
 Mr. Spiegel, who was acting for her and
 representing the corporation, which is really
 her; that in these negotiations, when the
 time came for the closing, they told her that
 the expenditure in obtaining the thirty thou-
 sand dollar mortgage was \$3175 and a bal-
 ance of \$5000, and they tacked it onto the
 other sum, making \$8175; and they made her
 execute a mortgage in favor of Tannenberg
 and Holdman for \$8175, she relying, of
 course, on Spiegel, who was representing her.

They made a deed to her, to the Moore
 Realty Company, but it was never recorded.
 The outcome of all this was that they drew
 an agreement which they call a trustee agree-
 ment, in which Mr. Spiegel is known as the
 trustee, Holdman and Tannenberg as parties
 of the second part and the Moore Realty
 Company, through Rose Moore, as parties
 of the third part, and the deeds and mort-
 gage to be held in escrow by Mr. Spiegel.
 Mrs. Moore was to take possession of the
 property and collect the rent, issues and pro-
 fits and pay the Peace Building & Loan Asso-
 ciation three hundred dollars a month; that
 upon failure of her paying or keeping up the

Transcript of Testimony

10 terms in accordance therewith, at any time at all, the trustee, her attorney, could end the agreement entirely and return the property. In other words, he made himself the sole arbiter of whether or not his client had faithfully complied with a certain agreement. Title she had never obtained|. It was held by the attorney who was representing her.

20 The \$3175 as expenses she claims to be unreasonable, after finding it out; she kept up for a few months and carried on and the first thing she knew she was notified by the tenants that they were not going to pay her any more rent. She demanded why. She went to Mr. Spiegel. Spiegel told her he would have nothing to do with her. She was notified by Mr. Spiegel they were going to take the property from her. He was going to end it. She complained about it. She relied on Spiegel. She went to Holdman and Tannenberg and each and every one was acting in the same way, and she couldn't carry it on any longer. The outcome was this: she couldn't pay the building and loan; they took possession from her, they notified her. Then they—the reason was they entered into an agreement with another party for the sale of this property and they were about to pass title, when they discovered this trust agreement on file, on record, at the Court House, which stopped the carrying on of that contract.

30

40 The suit here is for this, for an enforcement of that agreement, the accounting of what they have collected and a payment to-

Transcript of Testimony

ward it—the looking into the question of whether or not that mortgage of \$8170 was just and reasonable as made out and brought out by Mr. Spiegel in concert with the other two, he charging \$3175 for a thirty thousand dollar mortgage, and if—whether or not Mrs. Moore, the Moore Ralty Company, is entitled to reasonably keep the issues of an agreement which they made as fiduciary agents of Mrs. Moore; if they made a valuable contract with a third party without her permission and they deal with her at arms' length and as her fiduciary agents, she is entitled to the benefit of that contract. 10

That is the case here—and for an accounting. 20

THE COURT: That doesn't seem to be specific performance.

MR. AZZOLI: No.

MR. GREENFIELD: That is what the bill is for.

MR. AZZOLI: I beg your pardon.

MR. GREENFIELD: That is the prayer. 30

MR. AZZOLI: Oh, the prayer can be anything.

MR. GREENFIELD: Don't mean anything?

THE COURT: No, you cannot—(interrupted).

MR. AZZOLI You can pray for anything. Of course, you can pray for too much. It is 40

Transcript of Testimony

for an accounting and for her rights in the matter, and such other relief—I didn't make the prayer, but I read over the prayer. She is entitled to an accounting.

10 MR. GREENFIELD: Which we are ready to give.

MR. AZZOLI: You didn't do it in your answer.

MR. GREENFIELD: We agreed to perform our contract. We sold the property—after Mrs. Moore laid down on it. We sold it for five thousand dollars less than she agreed to pay.

20 MR. AZZOLI: Paragraph 7 says "That your complainant be decreed to be the owner of said property and that the mortgage of \$8170 to be held—"

THE COURT: Just let me read it, please. Well, now, what you pray for here is that the defendant convey this property to you.

MR. AZZOLI: Yes.

MR. GREENFIELD: We are ready to do that.

30 THE COURT: And that the defendant is ready to do.

MR. AZZOLI: Yes.

THE COURT: Now, they pray for an accounting.

MR. GREENFIELD: Yes, we are ready to do that.

40 THE COURT: And he is ready to do that. I do not see it leaves very much.

Transcript of Testimony

MR. AZZOLI: And then Paragraph 7—

10 THE COURT: Paragraph 7—"that the mortgage of \$8170 shall be held under agreement by Jacob Holdman and Henry Tannenberg, such mortgage to be decreed to be unreasonable, unjust and exorbitant—" I don't see how you can pray to set aside a mortgage on specific performance.

MR. AZZOLI: It is not a suit for specific performance. It is a question of the whole transaction. \$3170 they claimed was fees and expenses under this agreement.

MR. GREENFIELD: To which he agreed in writing and signed.

20 MR. AZZOLI: Which her attorney told her was reasonable and said his expenses were in that, which meant he brought suit for his fees and expenses in another court.

MR. GREENFIELD: This thirty-one hundred dollars counsel knows was the expenses paid to the building and loan for which we had to lay out the money for her.

30 MR. AZZOLI: I don't know anything of the kind and you didn't pay \$3170 to the building and loan.

MR. GREENFIELD: Here is the agreement, "Which mortgage party of the second part assumes and agrees to pay." Now, she is not a baby; she is an old time real estate operator.

MR. AZZOLI: I object to that.

40 THE COURT: I don't see any reason for my attempting to reform this mortgage, if

Transcript of Testimony

she signed an agreement to accept the mortgage and has, not only her own knowledge, but the advice of counsel, she was represented by counsel and agreed to take over this mortgage.

10 MR. GREENFIELD: Yes, sir.

MR. AZZOLI: No. The person who is representing her is the trustee in this matter. He is handling it.

THE COURT: I understood he was a member of the Bar.

MR. AZZOLI: Yes, sir.

THE COURT: And he represented her.

20 MR. AZZOLI: And represented the other people. That was one agreement he made himself, the trustee.

MR. GREENFIELD: To which he agreed.

THE COURT: I don't see there is anything in this case at all.

MR. AZZOLI: Your Honor has not heard the case.

30 MR. GREENFIELD: The trouble is this—your Honor, it may as well come out in the coloring—the trouble is this: This woman didn't do a thing but collect the rent for some time and failed and refused to pay any expense of the building and loan, failed to pay taxes, failed to pay interest.

MR. AZZOLI: I object to it.

MR. GREENFIELD: Wait a minute.

40 THE COURT: Wait a minute.

Transcript of Testimony

MR. GREENFIELD: We have the bills here—and failed to pay water until the Board of Health came there to shut off the water. We had to come there and pay everything, and then, when we had to take possession of it, she keeping all the rent, paying no building and loan, the building and loan threatened to foreclose. Then, when we took possession we had to save ourselves, took possession, collected the rents, then, when we sold the property at five thousand dollars less, at a loss, when she found out there was a bill filed in order to—

M. AZZOLI: I object to that.

MR. GREENFIELD: What do you call it, a hold-up game, nothing else. 20

MR. AZZOLI: I object to that.

THE COURT: The defendant has stated in open Court that he is willing to convey the property. That is the end of that part of it.

Now, he also states in open court that he is willing to account, and that is the end of that. 30

Now, the other prayer seems to be that this mortgage is all wrong. I am perfectly willing to listen to testimony on it, but, judging from the opening of counsel, I don't see that she has got much chance. She executed this paper with the advice of counsel and she undoubtedly knew what she was doing. Now, I don't see how she can come in and try to upset it.

MR. AZZOLI: On this theory: everything 40

Transcript of Testimony

done between attorney and client is to be free and above board and then \$3170 taxed on that, we have a right to inquire into it. She is not foreclosed—

10 THE COURT: If you want to introduce testimony on that point, all right, I will hear it.

MR. AZZOLI: That is what I want.

THE COURT: That one point; the other three points are settled.

MR. AZZOLI: That is what I want to do.

THE COURT: Go ahead.

20 MR. GREENFIELD: Go ahead.

ROSE MOORE, Sworn for the complainant.

DIRECT EXAMINATION by Mr. Azzoli:

Q. Mrs. Moore—

A Yes, sir.

Q When you entered into this—

MR. AZZOLI: I will withdraw that.

Q I show you agreement dated July 6, 1926.

A Yes, sir.

30 Q And ask you if you executed that with the Moore Realty Company, Inc.?

A Yes, sir.

MR. AZZOLI: I ask that be marked.

(Paper marked Exhibit C-1.)

Q The Moore Realty Company is composed of whom? Who is the Moore Realty Company?

40 A The Secretary was in Mr. Spiegel's office, Miss Janet—I forget her name, and I am the president of this.

Transcript of Testimony

Q The Secretary of the company is connected with Mr. Spiegel's office?

A Mr. Spiegel's office, yes.

Q And his stenographer?

A His stenographer is his secretary.

Q And who is the other officer? 10

A The other officer was Mr. Canna, but he was not—(interrupted).

Q And who was the other?

A Mr. Spiegel is supposed to be the other.

Q Did Mr. Spiegel organize the company for you?

A No, sir.

Q This has got "Helen G. Greenbaum, secretary".

A This is the lady in Mr. Spiegel's office.

Q And who made her secretary of the company, you or he? 20

A He did.

MR. GREENFIELD: Now, that is not the way to prove—

THE COURT: Let her go on.

Q When you purchased the property on West treet—

A Yes.

Q You were to give back the second mortgage? 30

A Yes; five thousand dollars.

Q Five thousand dollars. Why is it that the mortgage was \$8170?

A Well, they charged commission on that, or something.

Q Who told you what the \$3170 was on that mortgage?

A Mr. Spiegel.

Q And what did he tell you?

MR. GREENFIELD: If the Court please, 40

Transcript of Testimony

here is conversation with Mr. Spiegel, her own attorney.

I say this is not binding on the defendants, Holdman and Tannenberg. They had nothing to do with it.

10 THE COURT: No.

Q What did Mr. Spiegel tell you?

A When I purchased the property and we agreed on the price, Mr. Holdman and Mr. Tannenberg, I told him this was too much for the property, thirty-five thousand dollars. They told me they will go out to procure a building and loan for thirty thousand and they have to have some thing to show and they will make it all right with me after.

20 Q With whom did you have that conversation?

A With Mr. Spiegel, Mr. Tannenberg and Mr. Holdman.

Q How were they going to make it all right with you, did they tell you?

MR. GREENFIELD: Wait a minute. Just a minute. I object to that. That is an attack on the agreement, it seems to me, and I move to strike it out.

30 THE COURT: What are you trying to do, enforce this agreement with variations?

MR. GREENFIELD: That is according to the testimony here.

MR. AZZOLI: I am going on as far as the mortgage is concerned, to find out the reasonableness of the \$3170.

40 THE COURT: In other words, you want this agreement enforced, but not according to its terms.

Transcript of Testimony

MR. AZZOLI: No. I want the agreement enforced, but the question is what the \$3170 was.

THE COURT: That doesn't make any difference. If you want the agreement enforced, that is one thing, but you cannot expect this Court to make a new agreement. 10

MR. AZZOLI: I am not asking the Court to make a new agreement. According to your Honor's ruling, we were to go into the \$3170.

THE COURT: Not for that purpose. You know perfectly well this agreement either has to be enforced according to its terms or not at all. I cannot sit here and make a new agreement for you. You can take the property just according to this agreement or not take it at all. 20

MR. AZZOLI: According to your Honor's ruling—

THE COURT: Well, I will make a new ruling, if necessary. That is not only common sense, but it is law. You cannot expect me to enforce this contract and then vary the terms of it. That is quite out of the— (interrupted). 30

MR. AZZOLI: I am not expecting your Honor to vary the terms nor any other— (interrupted)

THE COURT: What is the object of the—(interrupted)

MR. AZZOLI: The agreement calls for this, your Honor please: Here is the situa- 40

Transcript of Testimony

tion: They represent the total expenditures, total sum \$8170.

THE COURT: Yes.

MR. AZZOLI: Now, that is untrue. The total expenses are not \$8170.

10

THE COURT: Very well. I am not going into that at all. You can have the contract enforced as it stands or not at all.

MR. AZZOLI: Not \$8170.

THE COURT: Very well. I am sorry, but I cannot make a new agreement for you.

MR. AZZOLI: What was the truth of it? That is what we want. We are willing to carry out what they intended to do.

20

THE COURT: She signed an agreement to do certain things. Now they come in and say they are perfectly willing to do it according to that agreement, and it will be done that way or not at all.

MR. AZZOLI: Does your Honor mean to say that—

30

THE COURT: Yes, I mean to say exactly that.

MR. AZZOLI: I have not stated it. Does your Honor take this position; a matter represented to a party to be a certain way, she executes it and later it is found out that what she executes is not true that she wants the thing placed in the light it should be and enforced as it should be, do you mean this Court cannot place a right reformation to a situation of that kind?

40

Transcript of Testimony

THE COURT: Not in a suit of this kind I cannot.

MR. GREENFIELD: A suit to rescind.

THE COURT: You ask to have this contract enforced.

MR. AZZOLI: Enforced in its true light, in such manner as is right. 10

THE COURT: Then it has got to be enforced as it is or not at all.

MR. AZZOLI: Just as the bill was drafted, it state its full situation. Here is its allegation: Paragraph 10 of the bill, which reads as follows—

THE COURT: I have read it. I understand it. 20

MR. AZZOLI: And I think it is clear what the purpose of it is.

THE COURT: I think so, to.

MR. AZZOLI: "Your complainant further states and charges that the said Louis Spiegel, who is trustee in exhibit A, was its attorney with whom there was the relationship of attorney and client, that any act or transaction done by the said Louis Spiegel as its attorney should have been fair, honest and reasonable, and that the said Louis Spiegel, Jacob Holdman and Henry Tannenberg, in order to gouge your complainant enforced to a position of impecunity placed a charge for fees, services and disbursements of \$3170 against your complainant, and added to the five thousand dollar sum due on mortgage, totalling the sum of \$8170 40

Transcript of Testimony

10 which the said Jacob Holdman and Henry Tannenberg hold under agreement, and which charge is wholly unreasonable, exorbitant and unjust and contrary to equity and good conscience," than it goes on to carry the proper averments, "of the sum of \$3170 enhanced the amount supposed to be due upon said second mortgage, so as to read \$8170 instead of \$5000 and claiming that the difference of \$3170 was for services and disbursements in connection with procuring and obtaining the said thirty thousand dollars building and loan from the Peace Building & Loan Association, your complainant further charges the truth to be that the sum of \$5000 is to be a second mortgage with no charges to be added thereon."

20

It seems to me, this Court can give her the proper relief, that is, the truth. It is the last paragraph of the bill. We want to carry the contract out. We want to take it as it should have been.

30 THE COURT: I have already passed on that.

MR. AZZOLI: That is our position.

THE COURT: Very well, then my conclusion is that you can have this property according to the agreement, exactly in the terms of the agreement. If you do not want it that way, I will dismiss the bill.

40 MR. AZZOLI: I say, we want in accordance with the agreement, and in the true light of the agreement and the true amount

Transcript of Testimony

of the mortgage should be, which we can prove in this court, and I would like to offer testimony on the record for that reason, to show what the true amount of that mortgage should be, so as to carry out the agreement in its true light and the way it should have been and not the way it was placed, gouging this complainant. That is my position. 10

THE COURT: I am not going to change the terms of the agreement.

MR. AZZOLI: I am not asking your Honor to change the terms of the agreement.

THE COURT: Very well. I would like to find out what you want.

MR. AZZOLI: I want the mortgage to read according to the true facts, what should have been as they agreed to it. 20

THE COURT: I tell you, I am not going to so decree.

I will decree that you can have your property according to the agreement. Now, you don't want it according to the agreement, do you?

MR. AZZOLI: Yes; according to what the agreement should be. 30

THE COURT: You want a modified agreement. Very well. I shall dismiss the bill.

On Bill, Amended Notice of Appeal

IN CHANCERY OF NEW JERSEY

10	Between MOORE REALTY COMPANY, INC., <i>Complainant,</i> —and— JACOB HOLDMAN, HENRY TAN- NENBERG and LOUIS SPIEGEL, <i>Defendants.</i>	On Bill, etc., AMENDED NOTICE OF APPEAL.	10
----	---	---	----

20	TO. William Greenfield, Esq., Solicitor for Defendants. 128 Market Street, Newark, New Jersey.	20
----	---	----

30	PLEASE TAKE NOTICE that the Moore Realty Company, Inc., the above named complainant, here- by appeals from the final decree by the Chancellor, on the advice of Vice-Chancellor Alonzo Church, filed in this cause and dated the 7th day of Decem- ber, 1927, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes.	30
----	--	----

30	LOUIS RUTH SHAPIRO, Solicitor for and of counsel with Complainant.	30
----	--	----

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

40	LOUIS RUTH SHAPIRO, Solicitor for and of counsel with Complainant.	40
----	--	----

26 MAY.T.1928

10

New Jersey Court of Errors and Appeals

Between

MOORE REALTY CO., INC.,
Appellant,

and

JACOB HOLDMAN, HENRY TANNEN-
BERG and LOUIS SPIEGEL,
Respondents.

On Appeal
from Chancery.

20

BRIEF OF APPELLANT.

A bill of complaint was filed by the appellant in this cause (Case, p. 5) to which the appellees filed answers and counterclaims (Case, p. 20 and p. 34-A) to which complainant filed replication.

No evidence was taken or heard by his Honor Vice-Chancellor CHURCH upon the hearing, and he refused to hear any evidence to substantiate the allegations of the bill of complaint and advised the decree appealed from, dismissing the bill of complaint and declaring a trustee agreement null and void (Case, p. 35).

30

Statement of Facts.

The appellant, a corporation, is composed of Mrs. Moore, a lady, she being the corporation, and consulted one Louis Spiegel, a member of the Bar of this State, to represent her in the purchase of property known as 47-49-51 West Street, Newark, Essex County, New Jersey, from Jacob Holdman and Henry Tannenberg for \$35,000 on March 19th, 1926, which persons are the appellees, and respon-

40

dents herein. An agreement was drawn in accordance therewith by the said Louis Spiegel as counsel for the complainant, and at his suggestion a Helen G. Greenbaum, a stenographer in his office, was made secretary of the appellant corporation, and Mrs. Rose Moore as the president thereof. Louis Spiegel, counsel of complainant, together with Jacob Holdman and Henry Tannenberg, told the said Rose Moore, as president of the appellant realty corporation, that they would secure a mortgage of \$30,000 toward the purchase of the property and they would take back a second mortgage for the balance. When the time came for the closing of title these three persons told her that the expenditures for obtaining the \$30,000 mortgage was \$3,175 and that this sum would have to be tacked on the \$5,000 mortgage, making a total mortgage in the sum of \$8,175. She, the said Rose Moore, as president of the said appellant corporation, believing and relying on the said Louis Spiegel, attorney for the said company, executed said mortgage in favor of Jacob Holdman and Henry Tannenberg; he, the said Louis Spiegel at that time representing the said Mrs. Moore and the said Jacob Holdman and Henry Tannenberg.

A deed was made for the property to the said Moore Realty Company, together with a mortgage for said sum, but never recorded; the final analysis of it all is: They drew an agreement, which they call a "trustee agreement," executed by Louis Spiegel as trustee, and Jacob Holdman and Henry Tannenberg and the Moore Realty Company, by Rose Moore, its president (Exhibit A, p. 15). Louis Spiegel, counsel for the appellant and Mrs. Rose Moore, is known therein as the trustee; Holdman and Tannenberg, as parties of the second part, and the Moore Realty Co., through Rose Moore, is known as party of the third part, wherein it is

agreed that the deed and mortgage is to be held in escrow by Louis Spiegel, Mrs. Moore to take possession of the property and to collect the rents, issues and profits and pay the Peace B. & L. \$300 per month; that upon her failure to pay or keeping up the terms in accordance therewith at any time at all the trustee, her attorney, and that of the appellant could end the agreement entirely and return the property to Tannenberg and Holdman. In other words the said Louis Spiegel made himself the sole arbiter whether or not his client had faithfully complied with a certain agreement, which is a most unconscionable situation, as title to the property was never obtained by the client; in theory and in contemplation of law it was held at all times by Louis Spiegel.

The \$3,175 as expenses, the appellant through Rose Moore claims to be unreasonable after investigation by her and found out that the expenses were not of that amount as represented to her by Louis Spiegel, her counsel, Jacob Holdman and Henry Tannenberg, defendants. She kept up the payment for a few months when she was first notified by the tenants that they were ordered not to pay her any further rent. She demanded why and received no explanation from the tenants. She went to Louis Spiegel, her counsel and trustee under the agreement, and he told her that he would have nothing further to do with her or the company. She was next notified by Louis Spiegel that they were going to take the property from her and her company; that the agreement was at an end and that he was turning over the deed and mortgage to Jacob Holdman and Henry Tannenberg. She, Mrs. Moore, as president of the appellant company, went to Jacob Holdman and Henry Tannenberg and each acted in the same way. She could not carry on the agreement any longer as she was not receiving the rents and

profits. The outcome of it all was this: Mrs. Moore, as president of the Moore Realty Company, could not pay the monthly dues, due at the Peace B. & L., and they took possession of the property from her under beguiled notice mailed to her after forcing her to a position of impecunity by preventing her to receive the rents, issues and profits from the property, and the said Louis Spiegel, as sole arbiter under the said agreement, returned the deed and mortgage to Jacob Holdman and Henry Tannenberg, but never surrendered the bond and mortgage in the sum of \$8,175 to the complainant realty company or Mrs. Moore, its president. The reason of all their actions is fully ascribed to the fact that they had entered into an agreement with another party for the sale of this property and in full derogation of the rights of the complainant in the premises, because the trust agreement was found on record at the Register's office, which stopped the defendant from carrying on their scheme to cheat and defraud the complainant.

The bill in this case was filed for an accounting of whatever monies was paid, collected and paid out by the said Jacob Holdman, Henry Tannenberg and the said Louis Spiegel, as trustee, and the reforming of the mortgage to read \$5,000, and inquiring into whether or not the mortgage of \$8,175 was just and reasonable as made out and represented by the said Louis Spiegel, counsel for the complaint, in concert with the said Jacob Holdman and Henry Tannenberg, if whether or not the said Louis Spiegel together with the other two defendants is entitled to keep the property and issues of a secret agreement which they made together while he, the said Louis Spiegel, was the fiduciary agent of the complainant and to declare the title in the name of the complainant and to

enforce the agreement in its true light as intended by complainant, and not permitting the fiduciary agent from making secret profits.

ARGUMENT.

1.

The Vice-Chancellor made a decree declaring the agreement null and void. He should have sustained the agreement. There was no evidence that destroyed the agreement. If the agreement was null and void, the complainant should have been put in *status quo*.

2.

The Vice-Chancellor decreed against complainant when no proof of breach was proven against it. He refused to take evidence in order to determine the issues between the parties.

3.

The Vice-Chancellor should have heard the evidence in order to rightly determine the issues as made out in the bill of complaint, to properly advise a decree in this case. The Court refused to hear the evidence, and decreed against complainant withal it was free from fault, as the bill of complaint properly pleads the facts to which the defendants answered and joined issue. That the trustee agreement, through artifice, is drawn in such a way that the terms of the same are not accurately expressed as to the amount of the mortgage, and the party injured by the fraud may come into equity for the purpose of having the instrument corrected and the contract, as reformed, enforced. It is like a bill filed, seeking to have an absolute deed declared to be a mortgage and

for the consequent enforcement of the mortgagor's equity of redemption. For where there has been fraud on one side and mistake on the other, this is a clear case of reformation.

Under specific performance the doctrine in law permits the enforcement of the agreement and compensation for defects; likewise an enforcement of the agreement upon correction of the same and enforced in the true light, which it ought to be. *Keater v. Brown*, 57 N. J. Eq. 600; *Melick v. Cross*, 62 N. J. Eq. 545. In *Powell v. Elliott*, L. R. 10, ch. 424, where a bill for specific performance was filed by the vendor and cross bill for rescission by the vendee, a decree was ordered for specific performance with an allowance for misrepresentation as to value. The same situation is presented in the bill of complaint in this case, and by the answers the Court should have heard the testimony and decreed specific performance with an allowance for the misrepresentation on the amount of the mortgage being of the additional sum of \$3,170. *Barker v. Cox*, 4 ch. D. 464; *Townsend v. Vanderwerken*, 160 U. S. 171; *Tobin v. Larkin*, 183 Mass. 389. Because such a relief cannot be obtained in law, but only by this extraordinary remedy of specific performance in equity.

4.

Equity views contracts which are made or take place between the parties occupying a confidential relation with a jealous eye, and goes further, forbidding any person standing in a fiduciary position from making any profit in any way, at the expense of the party whose interests he is bound to protect, without the fullest and most complete disclosure. *Loudenslagor v. Woodbury Heights Land Company*, 58 N. J. Eq. 556. Spiegel, as counsel for complainant, could not make any profit in concert

with Holdman and Tannenbergh by charging \$3,170 expenses for placing the \$30,000 first mortgage in the property and the Court should have taken evidence to establish this fact.

In the case of *Tyrell v. The Bank of London*, 10 H. L. Cas. 26, there was in existence a project to start a new bank in London and among the projectors of the scheme was the appellant, a solicitor, whose firm, it had been agreed, were to be employed as the solicitors of the company. The appellant, hearing that a certain lot of ground was for sale suitable for the purposes of the bank, entered into an arrangement with a person who controlled the option to buy from the owners, whereby the appellant became interested in the option. He then induced his co-projectors to purchase a portion of the property at an advance, he (of course) making a certain profit by the transaction. After the arrangement was discovered, a bill was filed by the company for the purpose of obtaining relief; and it was held that the appellant was accountable to the company for the profit which he had made. The company, it was held, had not a mere right to rescind the bargain into which they had entered; nor, on the other hand, was the appellant held to be trustee of any property other than that which he had actually bought and conveyed to the company. The decision, therefore, was that the company were not obliged to repudiate the transaction altogether, but were entitled to take the lot which had been conveyed to them at a price which it had cost Tyrell, in other words, that as to that particular property Tyrell could make no gain at the company's expense and the appellant was liable to account.

This case is decisive of the one at bar. How could Spiegel make a profit of \$3,170 in expenses for procuring a mortgage of \$30,000, and tacking the said amount on the \$5,000 second mortgage,

making it more than it should be? He was acting in collusion with the owners of the property to the disadvantage of his client, appellant, and the Court should have taken testimony on this point, as the complainant, appellant, was not obliged to repudiate the transaction, as the Court held (case 50), but was entitled to take the property subject to the mortgage agreed outside of reasonable costs and charges.

The bill was filed for this relief, for under the Chancery Practice Act, any relief can be afforded which the bill of complaint makes out together with the proofs, which the Court refused to do, and nullified all the existing rights of the appellant, who was not at fault. The relief asked for was not the making of a new agreement, but was the enforcing of the true agreement, and not as exacted by fraud.

It is respectfully submitted that the decree advised should be reversed and appellant permitted to prove her case.

Respectfully submitted,

May Term, 1928.

LOUISE RUTH SHAPIRO,
Counsel for Appellant.

26 MAY. 1. 1928

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

MOORE REALTY COMPANY, INC.,
Appellant,

and

JACOB HOLDMAN, HENRY TANNENBERG and LOUIS SPIEGEL,
Respondents.

*On Appeal
from the
Court of
Chancery.*

**BRIEF OF WILLIAM GREENFIELD,
Solicitor for and of Counsel with Respondents.**

This is an appeal by the complainant-appellant from the decree dismissing the complainant's bill of complaint and directing that the *lis pendens* filed be cancelled of record.

A bill was filed by appellant for specific performance compelling the defendants, Jacob Holdman and Henry Tannenberg, to perform a certain contract bearing date March 19, 1926, which contract is omitted from the state of the case, and whether it was done intentionally or not counsel for respondents does not know, therefore he takes the liberty of annexing a true copy of said contract to this brief. The above case was referred to Honorable Alonzo Church, one of the Vice-Chancellors of this State, before whom the same was heard on November 30, 1927. On that day counsel for respondents in open court offered in behalf of the defendants-respondents to perform the contract by tendering a deed for said land and premises in accordance with the terms of said contract, also in accordance with the supplemental contract, "Exhibit A," pages 15 to 18, inclusive, of the printed state of the case. Not

only did the respondents offer to perform and convey the said property but also to render an accounting for rents collected and moneys expended for the upkeep of the property. (See pp. 38-45, inclusive, of the Printed State of the Case.) It was then that the appellant sought additional relief in that to reform the contract, by inserting new terms, in other words, attempting to vary the written contract. The Court rightfully stated that this cannot be done in a suit for specific performance, nor will the Court attempt to make contracts for parties, as that is not within the province of the Court. The complainant-appellant then rested its case. The Court dismissed the bill of complaint and, it is respectfully submitted, rightfully so, and the decree should be sustained.

It is a fundamental principle of equity, well established, that a contract once entered into without fraud or deceit by competent persons who are capable to enter into contracts as in the case at bar, complainant, by Rose Moore, a real estate operator, the terms of the contract must be adhered to. Due to the very terms of the contract dated March 19, 1926, counsel for appellant failed to print the contract in the state of the case. The reason is very obvious, by reason of the fact that the contract provides that appellant should pay all expenses. Paragraph 4 of said contract is in the following language:

"It being understood by and between the parties hereto that the parties of the first part are to raise the mortgages to be placed on the premises in the total sum of \$34,999 *at the sole expense of the party of the second part*, in whatever amounts they may be able, that is to say, a first Building and Loan Mortgage be placed with any building and loan association that may accept the application for any amount they are able to

obtain; it being further understood and agreed that the second mortgage shall be the difference between the amount of the building and loan mortgage and the amount of the purchase price, said second mortgage, however, shall be for a period of three years from the date of the execution thereof with interest at 6%, payable semi-annually and containing the usual interest, tax, assessment, insurance and installment default clauses."

The purchase price was \$35,000. There was a mortgage obtained of \$30,000. Therefore, a deficiency of \$5,000, in addition to bonus charged by the building and loan association, search fees, revenue stamps, recording fees and back shares in said building and loan association, making a further sum of \$3,170, a total sum of \$8,170, as specified in the memorandum agreement, "Exhibit A" (p. 15 of the State of the Case), wherein and whereby the appellant agreed to pay the said sum of \$8,170, and did execute a bond and mortgage to the vendors, all of which documents were delivered to complainant-appellant's Trustee, Louis Spiegel, to be kept by him until such time as complainant performs the terms of its agreement. On July 6, 1926, complainant-appellant took possession of the property until July 8, 1927, a period of one year, collecting the rents, issues and profits therefrom, and found no fault with the terms of the contract, but when she (Rose Moore, president of Moore Realty Co., the appellant) defaulted in the monthly payments to the building and loan association, taxes, insurance and water rents, the contract was declared forfeited by the Trustee in accordance with the terms of the memorandum agreement, "Exhibit A" (p. 15 of the Printed State of the Case), whom both parties (complainant and defendants) appointed to act as arbiter, and the

defendants repossessed themselves of the property, paid all arrearages due to the building and loan association on the mortgage of \$30,000, taxes, insurance and other expenses, the complainant then found fault with the terms of the contract, and, as stated by counsel for defendants before the learned Vice-Chancellor, it was an attempted "hold up" by the complainant to prevent the defendants from reselling the property in question. The Vice-Chancellor was able to see through it, and refused to change the terms of the contract, after the complainant had acted upon the contract for a period of one year under the terms therein.

POINT 1.

Counsel desires to call the Court's attention to the case of *Davila v. United Fruit Co.*, Court of Errors and Appeals, 88 N. J. Equity, page 602, at page 603.

"The bill cannot be maintained because it seeks a decree for the enforcement of an agreement to arbitrate, or in the alternative to fix the price which the defendant is to pay for the lands claimed to be covered by the alleged contract. This objection states substantially what was held by the chief-justice in delivering the opinion of the court in the case of the City of Providence *v.* St. John's Lodge, 2 R. I. 46, and quoted with approval by Chancellor Green in our leading case of *McKibbin v. Brown*, 14 N. J. Equity 13, affirmed 15 N. J. Eq. 498, when he said:

At page 604:

"It is undoubtedly true that a court of equity will not enforce a contract of sale where the price is to be fixed by the parties, or by arbitrators to be chosen by the parties, and for the plain reason, that the contract sought to be enforced is incomplete in an

essential particular, and the court have no power to substitute themselves or a master to fix the price in the place of the parties or of arbitrators to be chosen by the parties. This would be not to enforce an existing contract of the parties, but to make one for them."

In the course of his opinion in *McKibbin v. Brown, supra*, Chancellor Green stated the doctrine which has been uniformly followed in cases in our State, when he said:

"No specific performance of a contract can be decreed in equity unless the contract be actually concluded and be certain in all its parts. If the matter still rest in treaty, or if the agreement in any material particular be uncertain or undefined, equity will not interfere."

It is respectfully submitted that if the Court will not interfere in an incomplete contract, the Court will not vary nor provide such terms that the contract itself does not provide, as in the case at bar when complainant attempted to offer evidence to vary terms of the contract in question. Will the Court in a suit for specific performance, as in the case at bar, alter the terms of the contract to suit the convenience of the complainant? The Court will bear in mind that the complainant cannot ask for reformation of the contract in a suit for specific performance. When the defendants offered themselves ready to perform, the complainant then wanted the Court to reform the contract, by providing new terms and conditions and then perform. It is respectfully submitted that the Court rightfully ruled that it is not within the province of the Court of Equity to make contracts for the litigants. If the complainant would have filed a bill to reform and if successful it could have asked for specific performance under the terms as mod-

ified by the Court. Equity will not grant such relief, after the complainant had possession of the property for a period of one year and collected the rents, issues and profits therefrom and made default in the terms of the contract, entered into on the advice of its own counsel. The Court upon reading the contract annexed to this brief, will note that it was carefully drawn, protecting all parties concerned, and in the supplemental agreement, "Exhibit A" (p. 15 of the Printed State of the Case), covering all details.

Complainant's lawyer, who acted for it, is a member of the Bar, and has been a practicing attorney for several years and of high standing, although complainant's counsel in an audacious way attacks him, without cause or justification, asserting that he had made a secret profit in the said sale without a scintilla of proof. There is no proof that he, Louis Spiegel, one of the defendants, a member of the Bar, had any interest, either directly or indirectly, in the property in question or in the profits that the defendants, Holdman and Tannenberg, would have made in the deal, and no one knows it any better than counsel for complainant. The attack in her brief against Spiegel is out of pure malice on the part of counsel for complainant, or perhaps the anxiety of earning a fee, as that is the only reason counsel for defendants can account for the uncalled for wilful attack on Mr. Spiegel's character.

POINT 2.

The next question is, was Louis Spiegel justified in taking the course he pursued by surrendering the papers to Holdman and Tannenberg. The Court examining the notices sent to the

complainant by Louis Spiegel, as Trustee, by registered mail (pp. 34H, 34I, 34J and 34K of the Printed State of the Case), dated January 23, 1927; February 7, 1927; June 30, 1927, and July 8, 1927, respectively, will note that complainant was given fair warning of Spiegel's (complainant's then attorney) intention to surrender the documents and declaring the whole transaction at an end. No attention was paid. No bill was filed by the complainant until August 2, 1927, asking that the defendants specifically perform the contract, to which the defendants in open court tendered themselves ready to perform. (See pp. 38-45 of the Printed State of the Case.)

Brisbane v. Sullivan, et al., 83 N. J. Equity, page 182, Howell, V.-C.

At page 186, the Court says:

"It is true that the agreement does not contain the phrase 'good title' yet it does contain a covenant to 'well and sufficiently convey' to Milnor 'his heirs and assigns by deed of full covenant and warranty, free from all encumbrance except,' &c. This means that the vendor is bound to make a good title. Under no circumstances, therefore, could the vendor succeed on a bill for specific performance; but the position of the vendee is different. The vendor having agreed that he would make a good title, and finding it impossible to do so, must, at the call of the vendee, convey what interest he has and receive the purchase-money, less an abatement thereof equal to the value of the interest not conveyed."

In the case at bar no such conditions exist. On the contrary, the vendors had offered and tendered a good title to the vendee in open court and offered to perform specifically all the terms and conditions agreed and undertaken by them,

but the complainant, while it filed its bill for specific performance, and when the defendants offered and tendered to perform, the complainant asked for modifications and variations from the terms set forth in the contract. It is respectfully submitted that the complainant cannot and should not be permitted, as it is said in common parlance, "blow hot and cold at the same time." The learned Vice-Chancellor rightfully ruled that the complainant should take the property in accordance with the terms of the contract or the bill be dismissed, and with the consent of counsel for the defendants, the counter-claim filed by the defendants was waived, and a decree was entered in favor of the defendants, dismissing the bill of complaint.

Counsel for complainant in her brief travels to England for citations and authorities, as though New Jersey is not well provided with authorities on such simple equitable questions as in the case at bar, that the complainant is entitled to a reversal of the decree by reason of the fact that the Vice-Chancellor would not permit variations or modifications of the contract dated March 19, 1926, and which contract counsel for defendant had taken the liberty to annex to this brief, although complainant omitted to include it in the state of the case, and the reason is very obvious, because the complainant raised objection to the mortgage of \$8,170. The Court will perceive that the purchase price of the property was \$35,000, on which property defendants procured a mortgage of \$30,000. Therefore, a deficiency of \$5,000 plus costs for procuring same, such as premiums, counsel fee for examination of title, back shares and other incidental expenses necessary to close title, amounting to \$3,170, and the difference between the purchase price and build-

ing and loan mortgage the sum of \$5,000, a total of \$8,170. The complainant agreed in writing as the Court will note by "Exhibit A" (p. 15 of the Printed State of the Case), signed the bond and mortgage, and went into possession and retained possession of the property for a period of one year, when complainant first discovered that she (Rose Moore) should not be called upon to pay obligations assumed by the Moore Realty Co., a corporation. It is respectfully submitted that it would be an imposition on the part of counsel to burden the Court with any authorities on such simple questions, that the complainant is not entitled to any relief. Equity is with the defendants and the decree should be affirmed.

POINT 3.

There is no fraud or misrepresentations by the defendants; no allegations that the defendants misrepresented to the complainant; no allegations that the documents signed by Rose Moore, president of the Moore Realty Co., were not by advice of her counsel, who consented to the terms of the agreement. But counsel for complainant attacks the character and reputation of Mr. Spiegel without cause or reason and without any scintilla of evidence that he had in any way profited or would have profited if the deal or transaction would have gone through. Yet, counsel for complainant attempts to besmirch this young lawyer.

Muller, et al. v. Weiss, 108 Atlantic Reporter, page 768, Lewis, V.-C.

In that case a contract was drawn. Facts were misrepresented to the defendants by the complainant, in that the record showed restrictions, restricting the land from the construction of an

apartment house or conducting any saloon. That fact was known to the complainant and unknown to the defendant. The broker in the transaction represented the owner, Muller, and called his own son, a lawyer, to put the transaction through, and the lawyer had admitted in that case he was derelict in not advising the defendant of the restrictions contained in the deed which he had in his possession. Therefore, the Court refused to decree specific performance to compel Weiss to perform the terms of the contract. In the case at bar no such evidence. On the contrary, title was free and clear. The deed and all documents were held in escrow by Spiegel, complainant's then counsel, upon condition that the complainant would perform certain terms. The terms of the contract were breached and the transaction was declared at an end, and by whom? Complainant's own counsel. He with the consent of the complainant and defendants was made sole arbitrator. There is not a scintilla of evidence that the Trustee acted in an arbitrary manner or that he betrayed his client. On the contrary, according to exhibits on pages 34H, 34I, 34J and 34K of the printed state of the case, shows that the complainant had ample time and opportunity to act. Nothing was done by complainant until after the defendants sold the property to someone else. Then and then only was the *lis pendens* and bill filed.

It is respectfully submitted that this is an attempt as counsel for the defendant characterizes it, to "hold up" and nothing more.

See *Oakey v. Cook*, 41 N. J. Equity, page 350.

POINT 4.

Counsel desires to call the Court's attention to the testimony of Rose Moore, who is the Moore Realty Co., as testified to by her on page 47, folio 25, and pages 48, 49 and 50 of the printed state of the case, as follows:

Q When you purchased the property on West street— A Yes.

Q You were to give back the second mortgage? A Yes; five thousand dollars.

Q Five thousand dollars. Why is it that the mortgage was \$8,170? A Well, they charged commission on that, or something.

Q Who told you what the \$3,170 was on that mortgage? A Mr. Spiegel.

Q And what did he tell you?

At page 48:

Mr. Greenfield: If the Court please, here is conversation with Mr. Spiegel, her own attorney. I say this is not binding on the defendants, Holdman and Tannenberg. They had nothing to do with it.

The Court: No.

Q What did Mr. Spiegel tell you? A When I purchased the property and we agreed on the price, Mr. Holdman and Mr. Tannenberg, I told him this was too much for the property, thirty-five thousand dollars. They told me they will go out to procure a building and loan for thirty thousand and they have to have something to show and they will make it all right with me after.

Q With whom did you have that conversation? A With Mr. Spiegel, Mr. Tannenberg and Mr. Holdman.

Q How were they going to make it all right with you, did they tell you?

Mr. Greenfield: Wait a minute. Just a minute. I object to that. That is an attack on the agreement, it seems to me, and I move to strike it out.

The Court: What are you trying to do, enforce this agreement with variations?

Mr. Greenfield: That is according to the testimony here.

Mr. Azzoli: I am going on as far as the mortgage is concerned to find out the *reasonableness of the \$3,170*.

The Court: In other words, you want this agreement enforced, but not according to its terms.

Page 49:

Mr. Azzoli: No. I want the agreement enforced, but the question is what the \$3,170 was.

The Court: That doesn't make any difference. If you want the agreement enforced, that is one thing, but you cannot expect this Court to make a new agreement.

Page 49, folio 40:

Mr. Azzoli: The agreement calls for this, your Honor please; here is the situation:

At page 50:

They represent the total expenditures, total sum \$8,170.

The Court: Very well, I am not going into that at all. You can have the contract enforced as it stands or not at all.

Mr. Azzoli: Not \$8,170.

The Court: Very well, I am sorry, but I cannot make a new agreement for you."

The law is well established in this State without the necessity of going to foreign countries, that parol evidence is not admissible to vary, modify or change a written contract, the existence and delivery of which was conceded by the complainant in the case at bar, by filing its bill for specific performance, and that it was at one time effective. No evidence will be received to nullify, modify or change such written contracts. On that I desire to call the Court's attention to

the following late case decided by the Court of Errors and Appeals,

Abraham A. Cohen, et al. v. Benjamin Cohn, decided February 6, 1928, reported in the New Jersey Advance Reports and Weekly Law Review, February 11, 1928, Volume 6, page 270;

Naumberg v. Young, 44 N. J. Law, page 331 cited.

Throughout the controversy between counsel and Court, the Court insisted that the contract must be enforced as it stands if the complainant seeks specific performance and the Court will not modify or reform contracts in a bill for specific performance and rightfully so.

It is respectfully submitted that the decree dismissing the bill of complaint filed by the complainant should be sustained with costs and counsel fee to be taxed against the complainant.

Respectfully submitted,

WM. GREENFIELD,
Solicitor for and of Counsel with Respondents.

THIS AGREEMENT made the 19th day of March, in the year of our Lord, One Thousand Nine Hundred and Twenty-six between JACOB HOLDMAN and MARY HOLDMAN, his wife, of the City of Newark, County of Essex and State of New Jersey, and HENRY TANENBERG, and ESTHER B. TANENBERG, his wife, of the City of Newark, County of Essex and State of New Jersey, parties of the first part and ROSE MOORE, single, of the City of Newark, County of Essex and State of New Jersey, party of the second part,

WITNESSETH, that the said parties of the first part for and in consideration of the sum of \$35,000 and other good and valuable consideration to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part doth agree to and with the said party of the second part that they the said parties of the first part will well and sufficiently convey to the said party of the second part, her heirs and assigns by deed of Warranty free of all encumbrances, except as hereinafter mentioned on or before the 19th day of September, 1926 next ensuing the date hereof, all that certain lot, tract or parcel of property hereinafter particularly described, situate, lying and being in the City of Newark, County of Essex and State of New Jersey, being known as Numbers 47-49 and 51 West street, consisting of a frame and brick building, together with eighteen single garages. And the said party of the second part, for herself, her heirs and assigns doth agree to and with the said parties of the first part, their heirs, executors, administrators and assigns, that she, the said party of the second part, will pay and satisfy or cause

to be paid and satisfied unto the said parties of the first part the said sum of \$35,000 as and for the purchase price of the foregoing described land and premises in the following manner, that is to say:

On execution of this agreement for which this is also a receipt, the sum of \$1 (One Dollar).

On purchase money bond and mortgage, same containing the usual interest, tax, assessment, insurance and installment default clauses and an agreement not to claim credit on the interest payable on bond and mortgage, by reason of any tax assessed, or to be assessed against the premises, with interest at 6% payable semi-annually from the date of execution, \$34,999.00 which mortgages party of the second part assumes and agrees to pay.

It being understood by and between the parties hereto that the parties of the first part are to raise the mortgages to be placed on the premises in the total sum of \$34,999.00 at the sole expense of the party of the second part, in whatever amounts they may be able, that is to say, a first Building & Loan mortgage be placed with any Building & Loan Association that may accept the application for any amount they are able to obtain; it being further understood and agreed that the second mortgage shall be the difference between the amount of the Building & Loan mortgage and the amount of the purchase price, said second mortgage, however, shall be for a period of three years from the date of the execution thereof, with interest at 6%, payable semi-annually and containing the usual interest, tax, assessment, insurance and installment default clauses.

It is further understood by and between the parties hereto that all apportionments shall be made as of the date of making this agreement and the amount of said apportionments shall be either deducted from the second mortgage or added to the second mortgage, as the case may be; it being further understood by and between the parties hereto, that no cash shall pass to close this transaction in addition to the sum paid as deposit except the rentals paid until closing title.

It is further understood and agreed by and between the parties hereto that for and in consideration of the sum of \$400 which sum is evidenced by the delivery of a note made by the party of the second part in the sum of \$400 payable one month from the date of these presents, which note is payable to the parties of the first part, receipt of which is hereby acknowledged, that said party of the second part shall immediately enter into possession of the premises and pay as rental therefor, the sum of \$400 monthly, payable on the 19th day of each and every month in advance, it being the intention, however, of the parties hereto that the note hereby delivered to the parties of the first part shall be considered as rental for the period of the date of these presents until April 19, 1926 and from April 19, 1926 until May 19, 1926 shall be considered as rental for the hotel, and the rental of the garages for that month amounting to approximately \$144 shall be collected by the party of the second part and refunded immediately upon collection, to the party of the first part. From May 19, 1926, to June 19, 1926, the sum of \$400 and said sum shall be paid every month, thereafter until the day of settlement. In the event of default of payment upon rentals, this

contract shall be null and void at option of parties of the first part.

It is further understood by and between the parties hereto that the second mortgage shall contain a clause providing that in the event of a sale of the premises by the party of the second part, the moneys received by the said party of the second part as a result of said sale, shall be paid to the parties of the first part in reduction of the principal amount of said second mortgage.

The parties of the first part are making no warranties as to encroachments or restrictions that may appear upon any search or survey, the party of the second part taking title to the premises subject to whatever encroachments or restrictions there may appear of record.

The rent of said premises, insurance premiums, water rents, taxes and interest including the rental paid by the party of the second part shall be adjusted, apportioned and allowed as of the day of making of this contract.

It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any proceedings or any Act for the Sale of Land for non-payment of the municipal taxes or assessments, or by adverse possession.

If at any time before the delivery of the deed the premises or any part thereof shall be or shall have been affected by any assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then, for the purposes of this contract, all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be

due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

And it is hereby agreed by and between the parties hereto that in case any street improvements are made, or have been made, upon which the property mentioned herein is located, up to the time of the delivery of deed, but not assessed, such assessment shall be borne by the party of the first part, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

JACOB HOLDMAN (L. S.)
HENRY TANENBERG (L. S.)
ROSE MOORE (L. S.)

Signed, Sealed and delivered in the presence of

LOUIS SPIEGEL.