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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Joseph S. Naame Company, a
corporation of the State of New Jersey, respectfully
shows that: 10

1. On the blank day of September, 1926, (the
exact date not being known), an agreement in writ-
ing was entered into between complainant and Louis
Satanov Real Estate & Mortgage Corporation, a
corporation of the State of New Jersey, a copy of
which is hereto made a part hereof and marked Ex-
hibit "A." 20

2. The complainant complied with the provisions
in said agreement by executing and delivering the
bond and mortgage referred to therein, and by con-
structing an apartment house thereon, but, instead
of building an apartment house containing one hun-
dred apartments, constructed one containing one
hundred seventy-two apartments; but no garage
was constructed, as is provided in the agreement,
for the reason hereinafter to be stated. 30

3. Approximately two weeks after the execution
and delivery of the bond and mortgage referred to
in the agreement, Joseph S. Naame, president of
complainant company, approached Louis Satanov,
president of the Louis Satanov Real Estate & Mort-
gage Corporation, defendant herein, and stated to

him that the complainant preferred not to build the semi-fireproof two-story garage referred to in the agreement, and in lieu thereof would build an apartment house containing one hundred seventy-two apartments, if said Real Estate & Mortgage Corporation would release complainant from building said garage and would agree to release from the operation of said mortgage a portion of the land described therein, said portion being as follows:

10 All that certain tract or parcel of land and premises hereinafter particularly described, situate in the city of Atlantic City, in the County of Atlantic and State of New Jersey:

20 BEGINNING at a point in the easterly line of Indiana Avenue, at a distance of 259 feet northwardly from the northerly line of Atlantic Avenue and running thence (1) northwardly, in and along the easterly line of Indiana Avenue 52 feet; thence (2) eastwardly, parallel with Atlantic Avenue 265.66 feet to a point in the alleged southerly line of the right of way of the Y Railroad; thence (3) southwestwardly in and along the alleged southerly line of the right of way of the Y Railroad 63.50 feet; thence (4) westwardly parallel with Atlantic Avenue 229.44 feet to the place of beginning.

being the lands and premises upon which the garage was to be constructed.

30 The said Satanov, acting for and on behalf of said Real Estate & Mortgage Corporation, and with authority so to do, agreed with the said Naame, acting for and on behalf of complainant, that if complainant would construct the enlarged apartment house, it would be released from building said garage and said Real Estate & Mortgage Corporation would re-

lease the land specifically described herein from the operation, effect and encumbrance of said mortgage.

4. Complainant has constructed the apartment house as stated, and, notwithstanding it has made request of said Louis Satanov Real Estate & Mortgage Corporation that it release from the operation of the said mortgage the said land hereinabove referred to, it has refused to do so.

5. A copy of the mortgage referred to in said agreement is hereto, hereby made a part hereof and marked Exhibit "B."

6. After the execution and delivery of said agreement, and after the execution and delivery of said bond and mortgage, complainant executed ten certain promissory notes payable to the order of Louis Satanov Real Estate & Mortgage Corporation one year after date, two years after date, three years after date, four years after date, five years after date, six years after date, seven years after date, eight years after date, nine years after date and ten years after date, and being in the following sums respectively: \$925, \$925, \$900, \$875, \$850, \$825, \$800, \$775, \$750 and \$750. Said notes may be dated on the same day as date of said mortgage, to wit, October 13, 1926, but they were not delivered until after the delivery of said bond and mortgage.

No consideration passed for said notes, but they were intended as a bonus to be paid by complainant to said Real Estate & Mortgage Corporation, for the acceptance by it of said bond and mortgage. The agreement to pay the bonus was made at and before the execution of the written agreement, which comprehended all the agreement between complainant

and the said Louis Satanov Real Estate & Mortgage Corporation concerning the transaction in question.

7. Complainant believes and therefore avers that unless enjoined, Louis Satanov will transfer said notes, which are negotiable, to an innocent holder for value.

10 Complainant is without adequate remedy in the courts of law, and therefore prays:

(1) That Louis Satanov Real Estate & Mortgage Corporation, a corporation of the State of New Jersey, who is the defendant to this suit, may answer this bill of complaint, without oath, and each statement therein made;

20 (2) That it be decreed that the defendant execute and deliver to complainant a properly executed and acknowledged release of the land specifically described in the bill, from the operation, effect and encumbrance of said mortgage, or that it be decreed that it has no lien thereon, by virtue of said mortgage, and that it be restrained and enjoined from transferring, assigning or in any wise disposing of the notes referred to in the bill; and that it be decreed that they be delivered up and surrendered to complainant as lacking a consideration; and that it
30 be restrained and enjoined from assigning, transferring and setting over the bond and mortgage, except upon condition that it inform anyone to whom it may be assigned that it is subject to complainant's right to have the premises specifically described in the bill released from the operation, effect and encumbrance thereon;

(3) That complainant have such further and other relief as may be just and equitable;

(4) That a writ of subpoena may issue, commending said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

COLE & COLE,
Solicitors for and of Counsel
with Complainant. 10

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

JOSEPH S. NAAME, being first duly sworn according to law, upon his oath says:

I am the president of Joseph S. Naame Company, a corporation of the State of New Jersey, the complainant herein; the statements in the attached bill, in so far as they are within my knowledge, are true, and otherwise I believe them to be true. 20

It is true that an agreement was entered into between complainant and Louis Satanov Real Estate & Mortgage Corporation, as stated, and that pursuant thereto said complainant executed and delivered the bond and mortgage referred to. It is also true that complainant constructed on the portion of the mortgaged premises an apartment house of one hundred seventy-two apartments, but did not build the garage referred to in the agreement; that after the execution and delivery of the bond and mortgage to the defendant I saw Louis Satanov, who is the president of the defendant corporation, and I said to him that complainant would prefer not to build the garage and in place thereof would build an apartment house of one hundred seventy-two apart- 30

ments instead of one hundred, as provided in the agreement, provided the defendant would release it from its obligation to build the garage and would also agree to release from the operation of the mortgage so much of the mortgaged premises as is specifically described in the bill, and that the said Satanov agreed that in consideration of what complainant would do, as stated, the defendant would agree to release it from its obligation to construct
10 the garage and also release the described land from the operation and effect of the mortgage.

After the apartment house was constructed, I asked Satanov to furnish the release and he said that the company would not do so.

After the execution and delivery of the mortgage, the complainant company, through me as its president, executed to the defendant the notes referred to in the bill. There was no consideration for the notes except that at and before the execution and
20 delivery of the agreement there was an understanding that the notes were to be given by way of a bonus for the acceptance of the bond and mortgage by defendant, but the written agreement was made thereafter in which there was no reference to said notes.

I believe that if said Satanov should be advised of the intention of complainant to defend against said notes that he will endeavor to assign them to some third person who may set up the defense of
30 being an innocent holder for value, without notice of the lack of consideration.

JOSEPH S. NAAME.

Sworn and subscribed to before me this 15th day of August, 1927.

ANN GOWBERG,
Notary Public of N. J.

EXHIBIT "A."

ARTICLES OF AGREEMENT, Made this
day of September, 1926,

BETWEEN, Louis Satanov Real Estate and
Mortgage Corporation, a corporation of the State
of New Jersey, doing business in the City of Atlan-
tic City, in the County of Atlantic and State afore-
said, party of the first part,

10

AND, Joseph S. Naame Company, a like corpora-
tion, doing business in the same place, party of the
second part.

WITNESSETH, that the party of the first part,
in consideration of the sum of One Dollar to it duly
paid, hereby agrees to sell unto the party of the sec-
ond part, and the party of the second part hereby
agrees to buy of the party of the first part,

ALL THAT certain lot, tract or parcel of land
and premises, situate in the City of Atlantic City, 20
in the County of Atlantic and State of New Jersey,
bounded and described as follows:

BEGINNING at a point in the Easterly line of
Indiana Avenue, at a distance of fifty and seventy-
seven hundredths feet Northwardly from the
Northerly line of Atlantic Avenue, and running
thence (1) Northwardly, in and along the Easterly
line of Indiana Avenue, two hundred sixty and
twenty-three hundredths feet; thence (2) East-
wardly parallel with Atlantic Avenue, two hundred 30
sixty-five and sixty-six hundredths feet to a point
in the alleged Southerly line of the right of way of
the Y Railroad; thence (3) Southwestwardly, in and
along the alleged Southerly line of the right of way
of the Y Railroad, to the place of beginning, as
shown on blueprint attached hereto and made a part
hereof,

BEING the same premises conveyed to the party of the first part by deed of Howard R. Cloud, Sheriff of the County of Atlantic, dated August 13th, 1924, and duly recorded in the Clerk's office of the County of Atlantic at May's Landing, New Jersey, in Deed Book 760, at page 471, and by Gertrude Albertson Huber, and others, by deed dated August 12th, 1925, and duly recorded as aforesaid, in Deed Book 783, at page 212, for the sum of One hundred and eighty-
10 five thousand dollars, which the said party of the second part hereby agrees to pay to the said party of the first part, as follows:

One hundred and eighty-five thousand dollars by the bond of the party of the second part, payable at any time within ten years from its date, with the obligation of paying five thousand dollars on account of principal at the expiration of each and every year after the first year, bearing interest at
20 the rate of six per centum per annum, payable semi-annually, and containing the usual tax, municipal lien, interest, insurance and installment payment clauses, secured by the purchase money mortgage of the party of the second part, containing like provisions, reciting the said bond, and such special provisions as are hereinafter set forth, and a first and paramount lien on the land and premises above described.

30 Settlement shall be made at the office of the Chelsea Title and Guaranty Company, Chelsea National Bank Building, Atlantic City, New Jersey, on October 27th, 1926, at 11 o'clock in the forenoon, when and where the deed, bond and mortgage shall be delivered.

Taxes, water rent and sewer rent shall be adjusted as of the date of settlement and the tax year

shall be considered as running from January to January.

Time shall be considered as of the essence of this contract.

And the said party of the first part, on receiving the said bond and mortgage, at the time above mentioned, shall, at its own proper cost and expense, execute, acknowledge and deliver to the said party of the second part, a proper deed for the conveying and assuring to it the fee simple of said premises, 10
free from all encumbrances, excepting:

1. Estate and right of owners and occupants of that portion of the premises Southeast of the center line of the Y branch of the West Jersey & Seashore Railroad Company by right of adverse possession, or otherwise;

2. Right of way of the West Jersey & Seashore Railroad Company through the premises and to the extent claimed by it; 20

Within sixty days after having acquired title to the land and premises above described, the party of the second part covenants and agrees to and with the party of the first part to commence the erection, construction and completion of a semi-fireproof two-story garage and five-story apartment house containing at least 100 one and two-room apartments and which shall be completed in every detail on or before June 15th, 1927. Should labor conditions, strikes or fire interfere with the completion 30
of the said building, the time during which the work is obstructed shall be added to the time within which it is agreed that it shall be completed.

At the time and place fixed for the delivery of the deed for the above described property, the party of the second part covenants and agrees to make, exe-

cute and deliver to the party of the first part, a bond in the sum of two hundred thousand dollars, with Joseph S. Naame as surety, guaranteeing the erection, construction and completion of the said semi-fireproof buildings on the said land, within the said time, free, clear and discharged of and from all liens, encumbrances other than the purchase money mortgage aforesaid, and other charges, together with a policy of insurance on the life of Joseph S. Naame in the sum of one hundred thousand dollars, assigned to the party of the first part as additional protection for the performance of this agreement in every detail.

10 The party of the second part covenants and agrees to pay the examination fee and all insurance premiums for insuring the purchase money bond and mortgage for one hundred and eighty-five thousand dollars, aforesaid, as a first and paramount lien upon the premises above described.

20 The party of the second part covenants and agrees to carry adequate fire insurance upon the buildings aforesaid, during the course of construction, and to assign the same to the party of the first part as additional security for the one hundred and eighty-five thousand dollars, aforesaid, from time to time, as obtainable, until the amount reaches the amount for which the mortgage is given.

30 In lieu of the right in either of the parties hereto to enforce the terms of this contract by an equitable action for the specific performance thereof, the parties stipulate and agree that upon the failure of the party of the first part to convey, or upon failure of the party of the second part to accept a conveyance in accordance with the terms hereinabove set forth, the defaulting party shall pay to the other the sum of ten thousand dollars, which, it is agreed,

shall be considered as liquidated damages and not as a penalty.

Title shall not be refused because of the lien of Federal and State inheritance taxes against the estates of Daniel Leeds, Rachel Leeds, Andrew Leeds and Kerwin Leeds, but the party of the first part covenants to see that the same are discharged in full as soon as assessed.

Performance of a part of this contract by either of the parties hereto shall not be construed as a performance of the whole thereof, nor shall this contract, upon the conveyance of the property above described, be considered as having merged with the deed delivered until the same have been performed in each and every particular herein set forth. 10

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective presidents, their respective corporate seals to be hereto affixed, and duly attested by their respective secretaries, the day and year first above written. 20

LOUIS SATANOV REAL ESTATE
AND MORTGAGE CORPORATION,
By

President.

JOSEPH S. NAAME COMPANY,
By

President.

SIGNED, SEALED And DELIVERED 30
in the presence of

Attest:

Secretary.

Attest:

Secretary.

EXHIBIT "B."

THIS INDENTURE, made the fifteenth day of October in the year of our Lord one thousand nine hundred and twenty-six.

10 BETWEEN Joseph S. Naame Company, a corporation of the State of New Jersey, doing business in the City of Atlantic City, in the County of Atlantic and State aforesaid, party of the first part, and Louis Satanov Real Estate and Mortgage Corporation, a like corporation, doing business in the same place, party of the second part:

20 WHEREAS the said Joseph S. Naame Company in and by its certain obligation or writing obligatory under its corporate seal duly executed and bearing even date herewith, stand bound unto the said party of the second part, in the sum of Three hundred and seventy thousand dollars lawful money of the United States of America, conditioned for the payment of the just sum of One hundred and eighty-five thousand dollars, lawful money as aforesaid, at any time within ten years from the date thereof with the obligation of paying five thousand dollars on account at the expiration of each and every year after the first year together with interest thereon payable semi-annually at the rate of six per cent. per annum without any fraud or further delay.

30 PROVIDED, however, and it was thereby expressly agreed that if at any time default should be made in payment of interest as aforesaid, for the space of thirty days after any semi-annual payment thereof shall fall due, or should said obligor, or its successors or assigns at any time fail to keep the buildings on the lands described in this the accompanying mortgage well and sufficiently insured

against loss or damage by fire and the policy or policies of insurance, to an amount not less than one hundred and eighty-five thousand dollars, assigned to, or the loss made payable to the said obligee, or its successors or assigns, or should the said obligor, or its successors or assigns, at any time fail to pay any tax assessed upon the lands described in this the accompanying mortgage and the buildings and improvements thereon for the period of sixty days 10 after the same is due and collectible by law, then and in the case of any such failure or default the whole principal debt aforesaid shall become due and payable immediately and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, anything therein contained to the contrary, notwithstanding.

AND PROVIDED FURTHER, however, and it was thereby expressly agreed that if at any time hereafter by reason of any default in payment either of said principal sum at maturity or of said 20 interest within the time specified, suit should be brought in any Court for the amount of such principal sum and interest or judgment should be obtained by virtue of the warrant of Attorney annexed thereto or proceedings to foreclose this the accompanying mortgage should be had, an attorney's fee of five per cent. for collection should be payable, by reason of such suit, judgment or proceedings, and may be recovered in addition to all principal, interest and taxes then due, besides costs of suit as in 30 and by the said recited obligation and condition thereof, relation to the same being had, may more fully and at large appear.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of One

hundred and eighty-five thousand dollars and for the better securing the payment thereof, unto the said party of the second part, its successors and assigns in discharge of the said obligation above recited as for and in consideration of the further sum of one dollar in specie, well and truly paid to the said party of the first part, by the said party of the second part at and before the ensembling and delivery hereof the receipt of which one dollar is here-
10 by acknowledged, has granted, bargained, sold, released and confirmed and by these presents does grant, bargain, sell, release and confirm unto the said party of the second part, its successors and assigns, all that certain tract or parcel of land and premises hereinafter particularly described situate in the City of Atlantic City, in the County of Atlantic and State of New Jersey.

BEGINNING at a point in the easterly line of Indiana Avenue, at a distance of fifty and seventy-
20 seven hundredths feet northwardly from the northerly line of Atlantic Avenue and running thence (1) northwardly, in and along the easterly line of Indiana Avenue two hundred sixty and twenty-three hundredths feet; thence (2) eastwardly, parallel with Atlantic Avenue two hundred sixty-five and sixty-six hundredths feet to a point in the alleged southerly line of the right of way of the Y Railroad; thence (3) southwestwardly in and along the alleged southerly line of the right of way of the Y Railroad
30 to the place of beginning.

Being the same premises conveyed to the party of the first part by the party of the second part by deed bearing even date herewith and intended to be forthwith recorded; this mortgage being given to secure the whole of the purchase money therein expressed. The parties hereto stipulate and agree

that the installment of interest due under the terms of this mortgage on April 15, 1927, be and the same is hereby extended until October 15, 1927.

TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said hereditaments and premises above granted or intended so to be, with the appurtenances, unto the said party of the second part, its successors and assigns forever.

PROVIDED ALWAYS NEVERTHELESS that if the said party of the first part, or its successors or assigns, do and shall well and truly pay or cause to be paid unto the said party of the second part or to its certain attorney or attorneys, successors or assigns, the aforesaid debt or sum of One hundred and eighty-five thousand dollars on the day and time hereinbefore mentioned and appointed for the payment thereof, together with interest for the same in like money in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made, for or in respect of any taxes, charges or assessments whatsoever; that then and from thenceforth as well this present indenture and the estate hereby granted as the said obligation above recited, shall cease, determine and become absolutely null and void, to all intents and purposes; anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

And the said party of the first part, for itself and its successors, does covenant and grant to and with the said party of the second part, and its successors

and assigns, that the said party of the first part, and its successors and assigns, shall not nor will apply for or claim any deduction by reason of this mortgage from the taxable value of the said lands and premises; and that the said party of the second part, and its successors and assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, 10 have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, or its successors or assigns, or of any other person or persons whatsoever.

And it is also further agreed by and between the parties to these presents that if the said party of the first part shall fail to keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire, in some safe 20 and responsible Insurance Company or Companies to an amount not less than one hundred and eighty-five thousand dollars and assign the policy and certificate thereof, or have the loss if any made payable to the said party of the second part as collateral security for the payment of the principal and interest aforesaid, it shall be lawful for the said party of the second part to effect such insurance and the premium and premiums paid for effecting the same 30 shall be a lien on the said mortgaged premises added to the amount of the said bond or obligation, and secured by these presents and payable on demand with legal interest.

IN WITNESS WHEREOF the said party of the first part has hereunto caused these presents to be signed by its President and its corporate seal to be

hereto affixed and duly attested by its Secretary the day and year first above written.

Joseph S. Naame Company
(Corporate Seal.)
By Joseph S. Naame, President.

Signed, sealed and delivered
in the presence of

Attest: George T. Naame,
Secretary.

10

State of New Jersey, Atlantic County, ss.

BE IT REMEMBERED that on this fifteenth day of October in the year of our Lord one thousand nine hundred and twenty-six, before me, the subscriber a Master in Chancery of New Jersey, personally appeared George T. Naame, who being by me duly sworn according to law did on his oath say that he is the Secretary of the Joseph S. Naame Company, the grantor mentioned in the foregoing indenture; that he knows the seal of said corporation; that the seal affixed to the said indenture is the common seal of the said corporation; that Joseph S. Naame is the President of said corporation and did by its order sign, seal and deliver the said indenture as its voluntary act and deed in the presence of said deponent; and that the said deponent did, at the execution thereof, subscribe his name as a witness thereto.

George T. Naame.

Sworn and subscribed before
me the day and year aforesaid.

Wm. M. Clevenger.

M. C. C.

Received and recorded October 16, 1926, at 9 A. M.
William A. Blair, Clerk.

Mortgage Book No. 433, page 182.

Endorsed:

Assigned 12/20/26 to Natl. Bank of Commerce
Book 87, page 24.

ANSWER.

IN CHANCERY OF NEW JERSEY.

20	Between JOSEPH S. NAAME COM- PANY, a corp., &c., <i>Complainant,</i> AND LOUIS SATANOV REAL ES- TATE & MORTGAGE COR- PORATION, a corp., &c., <i>Defendant.</i>	On Bill, &c. Answer.
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30 Defendant, Louis Satanov Real Estate & Mort-
gage Corporation, answering complainant's com-
plaint, says:

1. It admits that on or about the 4th day of Sep-
tember, 1926, an agreement in writing was entered
into between complainant and defendant corpora-
tion.

2. It admits that complainant erected an apartment house on said lands, but neither admits nor denies that it contains one hundred and seventy-two (172) apartments, as this defendant is without knowledge; but denies that it was intended at any time to contain only one hundred (100) apartments, and says that at the time of the preparation and signing of the agreement, complainant was uncertain as to the number of apartments the said building would contain, because he did not then have his plans prepared, and there was inserted in said agreement the minimum number of apartments, only, that said apartment house must contain, but not the actual number of apartments it was to contain. 10

3. It denies the allegation contained in paragraph 3, and every part thereof, and says that before the execution of the agreement between the parties, complainant requested defendant to put in said agreement a release clause, so that complainant would be able to secure a further loan upon the lands to be released, so as to obtain the money with which to erect said garage; that this proposition was refused, and the agreement was later signed by the respective parties without any release clause in it; and denies that Louis Satanov, acting for the defendant corporation, agreed with Joseph S. Naame, acting for complainant company, that if complainant would construct the enlarged apartment house, it would be released from building said garage, and said Louis Satanov Real Estate & Mortgage Corporation would release from the operation of said mortgage a portion of the land described therein. 20 30

Defendant further answering says that the said

Louis Satanov was without authority to make any such agreement.

Defendant further answering says that there is no agreement in writing between complainant and this defendant, wherein defendant has ever agreed to release said lands described in said bill of complaint, or any other lands, from the lien of said mortgage, except upon the payment of the whole amount thereof, as stated in the mortgage, itself.

- 10 Defendant further answering says that after the execution and delivery of said mortgage, and while complainant was in the course of construction of said apartment building, complainant approached Louis Satanov and asked the said Louis Satanov to have defendant release a portion of the lands covered by said mortgage from the lien thereof; and on the 18th day of February, 1927, delivered to the said Louis Satanov an agreement which he requested defendant to sign, but which defendant refused to sign, a copy of which is hereto annexed, and marked "Schedule 1."

20 Defendant further answering says that later, on the 28th day of February, 1927, the said complainant submitted to defendant a second agreement for the release of a part of the land covered by said mortgage, which defendant likewise refused to sign, a copy of which agreement is hereto annexed and marked "Schedule 2."

- 30 4. Defendant answering paragraph 4 says that there was never any agreement on its part to release any land from the operation of said mortgage.

5. Defendant admits that the copy of mortgage annexed to complainant's bill and marked "Exhibit B" is a copy of the mortgage referred to in said agreement.

6. Answering paragraphs 6 and 7, defendant says that the question of the notes was disposed of on the return of the rule in this matter.

Defendant prays that complainant's bill of complaint be dismissed.

BOURGEOIS & COULOMB,
*Solicitors for and of Counsel
with Defendant.*

10

SCHEDULE 1.

J. S. NAAME CO.
Engineers and Builders
Office: 206 Commerce Building,
Atlantic City, N. J.

February 18, 1927.

20

Joseph S. Naame Company,
206 Commerce Building,
Atlantic City, N. J.

Dear Sirs:—

It is hereby mutually agreed and understood that in the event of the Joseph S. Naame Company succeeding in placing a first Mortgage on property known as the Lincoln Apartment Hotel located on North Indiana Avenue, between Atlantic and Arctic Avenues, Atlantic City, New Jersey, said property being now constructed on land purchased from the Louis Satanov Real Estate and Mortgage Corporation that the said Louis Satanov Real Estate and Mortgage Corporation will release or subordinate the present first Mortgage of one hundred eighty-five thousand dollars (\$185,000) now held by the

30

said Louis Satanov Real Estate and Mortgage Corporation to the new first Mortgage which will be placed on the above mentioned property, provided, however, that all money realized on new first Mortgage over and above the sum of one hundred fifty thousand dollars (\$150,000) will be paid over to the said Louis Satanov Real Estate and Mortgage Corporation to be applied on the principal of the present first Mortgage which will then become a second
 10 Mortgage, and provided, however, that the sum of at least fifty thousand dollars (\$50,000) shall be paid over to the said Louis Satanov Real Estate and Mortgage Corporation.

SCHEDULE 2.

20

J. S. Naame, President. Phone Marine 7750.
 J. S. NAAME CO.
 Engineers and Builders
 Office: 206 Commerce Building,
 February 28, 1927.

It is hereby mutually agreed and understood that in the event of the Joseph S. Naame Company succeeding in placing a second mortgage on property
 30 known as the Lincoln Apartment Hotel, located on North Indiana Avenue, between Atlantic and Arctic Avenues, Atlantic City, New Jersey, said property being now under construction on land purchased from the Louis Satanov Real Estate and Mortgage Corporation; that the said Louis Satanov Real Estate and Mortgage Corporation for and in consider-

ation of the sum of one dollar (\$1.00) receipt which is hereby acknowledged bounded by Brighton Place, said fifty-two feet now being included in First Mortgage held by the said (Louis Satanov Real Estate and Mortgage Company).

10

REPLY.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH S. NAAME COM-
PANY, a corp., &c.,

Complainant,

AND

LOUIS SATANOV REAL ES-
TATE & MORTGAGE COR-
PORATION, a corp., &c.,

Defendant.

20

On Bill, &c.
Reply.
65-187.

Complainant joins issue on the answer of the defendant.

30

COLE & COLE,
*Solicitors for and of Counsel
with Complainant.*

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
 10 JOSEPH S. NAAME COM-
 PANY,
 Complainant,
 AND
 LOUIS SATINOV REAL ES-
 TATE & MORTGAGE COR-
 PORATION,
 Defendant.

20

Before VICE-CHANCELLOR INGERSOLL.

April 12, 1928.

Atlantic City, New Jersey.

30

PRESENT OF COUNSEL:

CLARENCE L. COLE, ESQ., for complainant.

HARRY R. COULOMB, ESQ., for defendant.

COMPLAINANT'S TESTIMONY.

JOSEPH S. NAAME, SWORN.

By Mr. Cole:

Q. What is your relation to the Joseph S. Naame Company, the complainant in this case?

A. President.

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Q. Do you know Louis Satinov?

A. I do.

Q. Referring to the agreement, a copy of which is made part of the bill, dated the fourth day of September, 1926, between Louis Satinov Mortgage Corporation and Joseph Naame Company, I ask you how many apartments were constructed on the land referred to in the agreement?

A. 172.

Q. The agreement provides for the construction of a garage on part of the land. Was any garage constructed?

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A. No, sir.

Q. When, about, was work begun on the apartment structure?

A. In the latter part of December, 1926.

Q. Did you have a talk with Mr. Satinov touching any change under that agreement?

(Objected to.)

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Mr. Coulomb: This is an effort to alter or vary the terms of a written contract by parole testimony.

The Court: I will permit the question subject to objection.

A. I did.

Q. When was that? About when?

(Objected to.)

A. I had a talk with him approximately two weeks after the signing of the agreement.

Q. Was that before the work was begun?

A. Before the work was begun.

10 Q. Do you recall where the talk was?

A. I spoke to him, first, personally, in his office, then in Mr. Paul Salsburg's office.

Q. What was the talk?

A. Under my contract I was to build a hundred-family apartment house and a two story garage. When I signed the agreement I talked with Mr. Satinov and decided —

(Objected to.)

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Q. This is after the agreement was made. What was the talk?

A. Decided that a garage would not be a paying proposition, that a larger proposition would be better. I went to Satinov and I said I didn't want to build a garage but a larger apartment house as originally contemplated and we spoke of our agreement which we originally drew up and didn't sign, and a release of this property, because the extra
30 seventy-two apartments will cost me twice as much as the garage will cost me, but I must have the release, in order to finance myself when completed. And he said, "That is absolutely all right to me and I am glad to see you make that change, because I will agree with you that I don't think the garage will pay, because if you make that 172 apartments, in size, I will release that piece of property."

- Q. Then you did put that 172 apartments there?
A. I did.
Q. What is the size of the tract of land where the garage was to go?
A. That is 52 x 165.
Q. Is that nearer to the Arctic Avenue side?
A. It is nearer to Arctic Avenue than Atlantic Avenue.

- Q. What is the size?
A. 52 x 165. 10
Q. Is there any structure on that at all, now?
A. No structure whatever
Q. At any time did Satinov claim that you had not performed your contract, that you had not put it on your land?
A. No, sir, he was there daily.
Q. What was the difference in cost of the building as constructed and what it would have been had it been a building of 100 apartments?

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(Objected to as immaterial and irrelevant.)

(Objection overruled.)

A. The difference in cost of a building of 100 apartments and one of 172 apartments would have been approximately \$150,000 to \$175,000.

Q. After this building had been constructed did you ask Satinov to give you a release from the mortgage on the unimproved portion? 30

A. I did.

Q. What did he say?

A. The first time I spoke to him he said, "All right." He said, "Have your release drawn up and I will sign it." I had a release drawn up by the Chelsea Title Company and at the settlement he re-

fused to sign it unless I made him some concession as to the terms of the mortgage.

Q. What settlement do you refer to?

A. The settlement whereby he had \$15,000 paid to his wife.

Q. Was that the time the property was transferred to you under the terms of the agreement, when you gave him the mortgage?

A. No, that was a later consideration.

10 Q. Was there a time when you and Mr. Satinov were in the office of attorney Paul Salsburg, touching this matter?

A. Yes.

Q. State what took place there?

Mr. Coulomb: What is the date of that?

Mr. Cole: I refer to the Salsburg matter.

20 Q. When was that, about?

A. In Mr. Salsburg's office, was about two weeks after signing the agreement. Mr. Salsburg had handled the original contract for me and Mr. Satinov and I had agreed to little changes in the agreement. I said I would like to have a little change or something, and Mr. Satinov said, "We have an agreement drawn up. My word is as good as my bond, the word of a gentleman," and he put his hand on his heart and he said, "That is all that is necessary for you to build the 172 apartments and I will only be too glad to release to you." And we shook hands, and that was all.

30 Q. How did you and Mr. Satinov happen to be in Mr. Salsburg's office?

A. I took him there.

Q. For what purpose?

A. In reference to this agreement.

Q. In your negotiations for the making of this agreement which is Exhibit A in the bill did you ever meet anyone except Mr. Satinov?

A. Never; always Mr. Satinov.

Q. Had you ever, in any way, in connection with this transaction, met with anyone other than Mr. Satinov? Had you arranged for a loan on this unimproved property in order to procure a release from Satinov?

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A. I did.

Q. Was the loan actually made?

A. The loan was actually made and the money actually laid in the Chelsea Title Insurance Company.

Q. Under this arrangement for release were you to pay the Satinov Company some money?

A. Not a cent.

Q. Did you as president of the Naame Company rely on the agreement you say that Mr. Satinov made in reference to the enlarging of this structure?

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(Objected to as immaterial and irrelevant.)

A. I did. I took his word for everything.

Cross-examination.

By Mr. Coulomb:

Q. I show you agreement dated September 4, and ask you if that is the agreement to which you refer, touching this property, signed by both your company and the Satinov Company.

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(Paper shown witness.)

A. It looks like it.

Q. This agreement is dated September 4th. It was two weeks after that that you had this conversation with Mr. Satinov touching some change in the terms of this agreement?

A. To the best of my recollection it may have been two weeks, it may have been two weeks or three weeks, but shortly afterwards, and before these operations were begun.

10 Q. When was settlement to be for this property, what date?

A. The middle of October—October 15th.

Q. October 15th?

Mr. Cole: The bond and mortgage were dated October 15th, 1926.

Q. Where was settlement to be?

A. At the Chelsea Title Company.

Q. Who were present at the settlement?

20 A. Mr. Satinov, myself, Mr. Salsburg and I believe Mr. Clevenger.

Q. That settlement was to be at the Chelsea Title Company October 15th?

A. That is right.

Q. Under the terms of the contract you were to give a bond to be signed by your company and signed also by your surety, to the Satinov Company in the sum of \$200,000, conditioned for the performance of this contract, were you not?

30 A. I was to sign a bond, yes.

Q. For the faithful performance of the building of an apartment house and garage?

A. That is right.

Q. I show you another paper drawn on the stationery of Mr. Clevenger and ask you whether or not that is the bond which you signed on October 15, in compliance with the terms of the contract?

(Paper shown witness.)

A. That is it.

(Paper marked D1 for identification.)

Q. On September 4, 1926, at the time when you signed the agreement which is referred to in your bill of complaint in this case and which has been identified as D1, marked so for identification, had you your plans drawn or prepared for the erection of this apartment house? 10

A. Yes.

Q. By whom were they drawn?

A. By myself.

Q. Have you them here?

A. No, sir, I haven't them with me.

Q. Had they been approved by the State department?

A. Yes. 20

Q. Had they been approved by the building department of the city of Atlantic City?

A. Yes.

Q. Had they been approved by the State Department of Labor having charge of that?

A. Yes.

Q. Will you produce them sometime today if this case is not finished by that time?

A. Yes.

Q. I call for them now. When, if at all, was the change made in these plans, if at all? 30

A. Immediately.

Q. Immediately. That is to say, before you got any promise from Satinov?

A. No, I mean within two or three weeks after signing the agreement. I had to begin work within

60 days, according to the contract; and I had to get busy in the summer on it.

Q. Your plans were approved by the State Department and the local building department, on September 4, 1926, either before or on that date?

A. It is pretty hard to answer that question because there were so many sets of plans done. There was one for 100 and one for 172 apartments. Which one are you referring to?

10 Q. The ones there of September 4th. I am asking you whether these plans were approved by the State at that time.

A. For the original hundred-apartment house.

Q. Which ones were ready on September 4, 1926?

A. None ready September 4.

Q. September 4, 1926?

A. None ready.

Q. Then there were no plans ready at the date of making this agreement?

20 A. I will amend my answer by saying there were plans ready and O. K.'d by the State, which I had to have at Newark, for the 100 apartments, because it takes two weeks to O. K. them and I went to Newark, myself, personally, and had them O. K. 'd.

Q. Have you those plans?

A. I couldn't tell you. I will have to look it up.

Q. When did you make the plans increasing it to 172 apartments?

A. Two or three weeks afterwards.

30 Q. Were they ever approved by the State Department?

A. I took them to Newark the week following, myself.

Q. Have you these plans?

A. I have this plan. I believe I have.

Q. Have they on them the approval of the State

Department, and also the approval of the Atlantic City building department?

A. Yes.

Q. When did you get your permit to build the apartment house?

A. The city permit?

Q. Yes.

A. That I couldn't tell you.

Q. I show you what purports to be a copy, and ask you if this copy, the date of this copy, is about 10 the time that you got your plans?

A. This is a copy of it. I can't swear to it as to dates; but that is not my signature, on that.

Q. The date there is correct?

A. That I couldn't tell because I might start a job and not get a permit until weeks after that.

Q. Is that in violation of, or according to, law?

(Objected to.)

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Q. Sometime after October 15, to be accurate, December 21, 1926, you executed a declaration of no off-set as to this \$185,000? I show you a paper which purports to be a declaration of no off-set, signed that day.

(Paper shown witness.)

A. That is right.

Q. That was signed at whose request?

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A. Mr. Satinov's.

Q. And delivered to him?

A. That I couldn't tell. Mr. Satinov asked me to do him a favor, to do this in order to borrow some money, which I did. I said I would be glad to do it.

Q. When did you first make any request of Satinov to release the property which you say he agreed to release?

A. To the best of my recollection, several weeks after the signing of the agreement.

Q. You didn't own the property several weeks after signing the agreement, did you? You didn't get title until October 15th?

A. I didn't own title to it. That may be true; 10 but about this time it was a peculiar proposition.

Q. What I want to know is, after your deed had been given to you and you in return had given back to Satinov a mortgage for \$185,000, you made your request of Satinov for a release?

A. Several weeks after signing the agreement.

Q. What you refer to now is the agreement of September 4, 1926?

A. That is right.

Q. What time was it, in respect to the settlement 20 at the Chelsea Title Company when you received your deed and in return gave back to Satinov a bond and mortgage—was it before that time?

A. It must have been before that time.

Q. Subsequent to February 18, 1927, that would be last February a year ago, did you come to Mr. Satinov's office with a proposition with respect to placing another mortgage on these entire premises?

A. I couldn't tell you, we had several different conversations then.

30 Q. I show you a letter and ask you whether that letter was on your stationery and whether the contents were prepared by you.

(Paper shown witness.)

A. Yes.

Q. That had to do, had it not, with release of the present \$185,000 mortgage?

A. No.

Q. Isn't what you went there for, in order to have him release this property from the \$185,000 mortgage?

A. No, not a bit. That was a separate proposition entirely; had nothing to do with it.

Q. You brought this to Mr. Satinov?

A. That is true.

Q. On February 18?

A. Yes.

Q. The proposition set forth in this letter was rejected by Satinov?

A. I couldn't tell you whether it was rejected. I couldn't get the mortgage spoken of.

Q. On this same date, a few hours after you had submitted the proposition in Exhibit D4, didn't you submit to Satinov a further proposition?

A. I couldn't tell you.

Q. I show you a letter written on your stationery and ask you whether that refreshes your memory as to that fact, that on that same date, February 18, 1927, you presented to Satinov another proposition differing from that contained in Exhibit D4?

A. This was made at the suggestion of Mr. Satinov.

Q. That was after you made the one contained in Exhibit D4, which I showed you?

A. Yes.

Q. And was made several hours afterwards?

A. That I couldn't tell you.

Q. Where was it—in your office?

A. That I couldn't tell you.

Q. Was it dictated by you?

A. That I couldn't tell you, whether I dictated

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it or whether I had my girl draw it up or had it dictated.

Q. You know it is on your stationary but don't know who dictated it?

Q. Nothing was done under either of these propositions by Satinov?

A. For the reason that I couldn't get my mortgage.

Q. Nothing was done?

10 A. That is correct.

Q. A few days later, February 28th, you presented another proposition to Satinov relative to dealing with this mortgage matter?

A. Yes, there were a number of propositions.

Q. I show you a letter on your stationery and ask you whether or not that letter contained a proposition which you submitted him on February 28th?

20 A. This proposition was offered to him in conjunction with another. There should be a letter accompanying this one.

Q. What was your proposition contained in the letter written by you?

A. Written by me? That calls for a proposition similar to this other.

Q. They were all three rejected by Satinov?

A. No, they were not all rejected.

Q. They were not accepted?

A. No, because they couldn't be rejected.

30 (Exhibits D5 and 6 respectively marked for identification.)

Q. How many stories in height is this apartment house building?

A. Five stories.

Q. The same number of stories as that provided for in the agreement of September 4, 1926?

- A. I believe so, yes.
- Q. Under your original plan, the garage which you did not build was to be erected on this property which you now claim should be released from this mortgage?
- A. No, sir, that is not right.
- Q. Where was the garage to be built?
- A. The garage would originally have occupied a little more ground.
- Q. Than what? 10
- A. That is there now. By increasing the size of the apartment I had to occupy more ground.
- Q. Where was the garage property to be located?
- A. On the piece of property near Arctic Avenue.
- Q. Facing Indiana Avenue?
- A. Facing Indiana Avenue, yes.
- Q. Where was the apartment house to be located?
- A. On the portion near Atlantic Avenue.
- Q. This agreement dated September 4, 1926, was signed by you where—in whose office? 20
- A. I don't remember where that was signed, in whose office.
- Q. Did you and Mr. Satinov have any conversation with Mr. Clevenger relative to the terms of this agreement?
- A. What do you mean by "terms"?
- Q. The provisions in it; what you were to do, what your company was to do and what Mr. Satinov's company was to do.
- A. Yes, that was all discussed. 30
- Q. With Mr. Clevenger?
- A. With Mr. Clevenger, personally.
- Q. Mr. Clevenger was representing the Satinov Company at that time?
- A. Yes.
- Q. At the time this agreement was drawn didn't

you request that there be a release clause put in it and wasn't that suggestion by you rejected?

A. No, I didn't; but I could explain that.

Q. Did you or not request to have contained in this agreement of September 4, 1926, a release clause?

A. When that agreement was signed it wasn't necessary to have that clause in.

Q. I didn't ask you that. I asked you whether
10 you made request to have a release clause put in there?

A. I didn't make the request.

Q. Through you or anybody for you?

A. No, sir.

Q. Sure of that?

A. No, sir.

Q. You had no such idea?

A. Not when that was signed.

Q. What do you mean by that answer.

20 A. There was another agreement drawn up before that, by Mr. Satinov, with me. He is going to say we didn't.

Q. Did you, prior to the time of making the agreement of September 4, ask that a release clause be put in that agreement?

A. Yes; prior to this?

Q. Yes.

A. Yes.

Q. It wasn't contained in it?

30 A. No, sir.

Q. The Satinov Company started foreclosure proceedings on this mortgage against you?

A. That I don't know.

Q. Do you mean to say that you absolutely don't know, you don't remember, or what?

A. My attorneys are handling that. I don't know whether it is the same proceedings or not.

- Q. Were any subpoenas served on you?
A. Yes.
Q. By the Satinov Company?
A. Yes.
Q. In which they were complainant?
A. Yes.
Q. To whom did you take that?
A. To Mr. Salsburg.
Q. Do you know whether or not he did attend to that for you?

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(Objected to.)

Mr. Coulomb: I propose to show that the mortgage was foreclosed, that an answer was filed by Mr. Salsburg and that in that answer no defense was made that there was any agreement recited as to release of this property.

The Court: I will permit the question. 20

- Q. Do you know whether or not he prepared an answer for you?
A. To the best of my knowledge he did.
Q. Did you have any conversation with him at that time as to a defense of this foreclosure suit?
A. At various times, yes.

Mr. Coulomb: I would like to offer the original bill. 30

(Objected to.)

The Court: I will permit the offer.

- Q. First, about the plans; if you have any plans

either as originally made, or modified, where would they be?

A. In my office.

Q. How long would it take you to get them?

A. About 10 or 15 minutes.

Q. When you leave the stand will you go and get whatever plans you have?

A. I don't know whether or not I can get them all but I will get what I can.

10 Q. Were the plans for this building as constructed finally lodged with the building inspection department of Atlantic City?

A. Yes.

Q. You spoke about going to Newark, yourself. Why did you go to Newark?

A. Before I can build a building of this type, the house inspection department must pass on it. Originally I had contemplated building an apartment house above a garage, with a release clause drawn in the agreement. I went to Newark the day before the agreement was to be signed and the State inspector said, "It is impossible for you to build a building above a garage on account of fire purposes." I came back to Mr. Salsburg and I said, "The only thing I can do then is to build on the other piece of property. I can't build."

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Q. Did you afterwards go to Newark to have approved those changes?

A. I did.

30 Q. That was done?

A. That was done, yes.

Q. Were the buildings in any way made wider in order to permit of 172 apartments?

A. Yes, the grounds was almost double.

Q. How many feet were added laterally to this building in order to get 172 apartments?

A. Approximately 50 feet.

Q. That is, in width and for the full depth?

A. Front and width and full depth. That lot is irregular and the depth which it takes up is deeper than originally contemplated because it makes a circle in the lot.

Q. You were asked whether or not you had discussed with Mr. Clevenger or others in his presence a release before the signing of this agreement on September 4, 1926.

A. Yes, we did that.

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Q. State what the talk was, about a release, before that agreement was actually signed?

A. I was to build a two-story garage and a three-story apartment house above the garage and release given approximately for 100 feet nearer Atlantic Avenue, which is more valuable than the other. That was the original conversation.

Q. Why did you want that release?

A. Simply to finance the proposition to completion.

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Q. Then the plan you had in mind was changed by reason of what the parties told you in Newark?

A. That is right.

Q. Will you after leaving the stand go and try to locate these plans?

A. Yes.

PAUL M. SALSBURG, SWORN.

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By Mr. Cole:

Q. You are a member of the bar of this State?

A. I am.

Q. When were you admitted?

A. February term, 1919, and as counsellor in 1912, February term.

Q. Do you know Mr. Naame just on the stand?

A. I do.

Q. Do you know Mr. Satinov?

A. I do.

10 Q. Did any talk take place in your presence between Mr. Naame and Mr. Satinov concerning the property on which the apartment house was built, involved in this case?

A. Yes, there were many conversations.

Q. Will you, having in mind the question that arose, state when and where these conversations took place and what they were? Beginning, of course, with the earliest.

Mr. Coulomb: Objected to on the same ground.

20 The Court: It is permitted.

A. In the very beginning Mr. Naame, as a client, came to me and submitted to me what he proposed to do with Mr. Satinov. Mr. Satinov, in company with Mr. Clevenger—Mr. Naame told me —

(Objected to.)

30 Witness: As a result of what Mr. Naame told me I conversed with Mr. Clevenger and as a result of our negotiations Mr. Clevenger prepared a tentative agreement. The agreement—across the front it said, "This copy for correction. Not for execution." It might be well at this point to introduce this.

Mr. Coulomb: What is its relevancy? This is objected to.

Witness: The agreement was submitted to me to look over, to allow me to go over the matter with my client and make whatever corrections were necessary so as the final agreement could be entered into. Shortly after there was another agreement, I believe. The one marked in evidence here, I believe, was the one that was finally executed.

Q. What was the next step after that?

A. After that, my recollection is that settlement 10
was then made at the Chelsea Title & Guarantee Company, Mr. Clevenger, Mr. Satinov, Mr. Naame and myself being present, and the deed delivered and the mortgage executed and delivered. About two weeks later Mr. Naame came to my office and told me concerning a change in the plans that he contemplated. I sent him to Mr. Satinov and asked him to have Mr. Satinov call at my office. Mr. Satinov and Mr. Naame both came to my office and the conversation that took place was this: Mr. Naame 20
said, "Mr. Satinov ——"

(Objection to conversations being given.)

The Court: It is admitted.

Witness: In my presence he said, "Paul, I can't build a hundred-family apartment house and garage; that is, I don't want to build it, but I would rather build a larger apartment house consisting of 172 30
apartments and cut out the garage." He said, "I think it would be better, a better proposition for Mr. Satinov, and I think it would be a better proposition for me." He says, "Mr. Satinov would have a much finer security for his mortgage, a much more expensive building and I would have a bigger

income, and make the properties a good proposition and more successful, because I don't think a garage would pay nearly as big as a big apartment house." I turned to Satinov and said, "Is that satisfactory to you?" and he said, "Positively." "But then" Naame said, "To do this it is going to require more money; and the piece of ground approximately 52 ft., on which I intended to build a garage, I will need, to raise more money and," he said, "Mr. Satinov will have to release that." Satinov said, "I will release that." Satinov said, "I will release it when the building is completed." I then said to him, "Satinov, we better put this in writing." He said, "I won't sign any writing." Then, with his right-hand over his heart he said, "My word is my bond. Let him build the building, make 172 apartments and I will release the ground." I turned to him and I said, "Louis, I am taking a long chance to advise my client to go through with that. I am going to let him take the chance. You tell me you will release it." I said, "I am going to take a chance." I met him at least five or six times in the Guarantee Trust Building and it seemed to be always as you come up the steps from the 3rd to the 4th floor, off the elevator, and the substance of the conversation each time was the same, practically. I would say, "Lou, how is it coming along?" and he would say, "Wonderful. I am tickled to death with the proposition." I always finished up by saying, "Don't forget, Lou, the Satinov Company has promised to release that land when Joe gets through, and he is depending on that. If he doesn't get it, the chances are he will lose the whole proposition." "When he is through," he said, "I will release it and give my promise that I will release it." If my memory serves me correctly, on the following day Naame came to the office and he

was excited. Satinov was with him. He said that Satinov refused to release the lot, that the building is done. Satinov said that he never made that promise. I looked at him and I said, "Do you mean _____,"

Q. Talking to who?

A. Talking to Satinov. I said, "Do you mean to tell me—look me in the eye—that you never promise to release that lot?" He wouldn't answer me directly, but he says, "Now, well now, I tell you. If Naame will make me a concession I will release." I said, "What do you mean by 'concession'?" He said, "Well, if he makes my mortgage five years instead of ten years I will release it." I said, "Lou, you never gave your word in your life and kept it." I said, "I anticipated it, that you wouldn't keep it." I said, "You promised to release this lot. Now you go back on your word and I don't think you ought to do it and I think I ought to file a bill in Chancery." 10 20

Cross-examination.

By Mr. Coulomb:

Q. You represented Naame and the Naame Company?

A. Yes.

Q. You have offices in the Guarantee Trust Building?

A. Yes.

Q. What floor?

A. 4th floor.

Q. Mr. Clevenger's office is on what floor?

A. On the 6th floor.

Q. You knew that Mr. Clevenger represented Satinov?

A. Not after final settlement was made, because Satinov had gotten other lawyers at that time.

Q. You knew that he wasn't the only one that had anything to do with this settlement?

A. I didn't consider that after settlement.

Q. Didn't you think you ought to have Satinov get counsel and to call up Mr. Clevenger who had
10 been present at the title company when settlement was made?

A. No; I didn't think that if he gave his word it was necessary. He refused to enter into a writing.

Q. You told him you oughtn't to take a chance at the very time it was given?

A. I told him I would advise my client to take that chance.

Q. Yet you suspected that you were taking a
20 chance?

A. I certainly did.

Q. Everything else in this matter was done by written agreement?

A. As far as I can recall, now.

Q. You were familiar with the bond that was given, I assume?

A. For completion.

Q. A bond for \$200,000, signed by Naame?

A. Yes.

30 Q. And the Naame Company?

A. Yes. That was prepared after that time when the other agreements were prepared.

Q. The bond which you have in your hand was given as security for performance of the agreement of September 4, 1926, wasn't it?

A. Yes, I think so.

Q. Your client was obligated to the extent of \$200,-

000 to see that a garage and apartment house were built in accordance with the terms of the agreement. Isn't that so?

A. Correct.

Q. You were taking a chance that would subject your client to suit on a bond for \$200,000, not relying on Satinov, your saying you were going to take a chance on him?

A. I had a mental reservation in that regard. My mental reservation was to have the matter brought 10 before the courts for redress if he didn't keep his word.

Q. Mr. Clevenger was within a few steps of your office?

A. Yes.

Q. You might have suggested that Satinov consult with Mr. Clevenger before you took any steps?

A. That might have been done, but when he said he would sign no agreement, but that his word was his bond and that he would do as he promised, I 20 didn't feel there was any need.

Q. Yet you had the obligation of a bond and mortgage which you say was executed at that time, and this bond of \$200,000 outstanding?

A. That is right.

Q. And you had the feeling that it may not be carried out?

A. I knew the courts would enforce it.

Q. There would have to be some agreement in there? 30

A. The question of part performance was always in my mind.

Q. I mean that there should be some agreement as to the release?

A. Verbal or written?

Q. Verbal or written.

A. Oh, yes.

Q. Mr. Satinov brought a foreclosure suit against Naame on this mortgage?

A. Yes.

Q. Do you recall when that was?

A. No, but if my memory serves me correctly it was subsequent to this suit now being tried.

Q. Did you file an answer in that suit?

A. I think Judge Cole prepared it.

Q. Will you look at this and tell me whether this
10 was an answer filed by you? You can tell by looking
it over?

A. This was filed by Judge Cole.

Q. Are you familiar with the terms of it? Did you confer with Judge Cole about filing an answer?

A. Yes.

Q. Your name is on it as counsel?

A. It isn't on this; yes, my name and Judge Cole, of counsel.

Q. At the time of filing this answer you, of course,
20 knew that Naame claimed to have the right to have a portion of the land mentioned in that foreclosure bill, released?

A. I knew that.

Q. You made no defense to that foreclosure suit on that ground?

A. That thought was discussed by Judge Cole and I. The answer speaks for itself, but we concluded as his counsel, by the answer, that that wasn't necessary.

30 Q. How long did you continue to represent Mr. Naame or the Naame Company?

A. I continued to represent him from that time, and prior thereto and still do represent him.

Q. Did you have anything to do with the preparation of a declaration of no off-set on December 21, 1926?

A. I don't know a thing about this paper; that is,

I don't recall anything about it; don't recall having seen it, this declaration of no off-set.

Q. I show you three letters or propositions on Mr. Naame's stationery, two of them dated February 18, 1927 and February 28, 1927, respectively, and ask you if you are familiar—I ask you if you took part, any part in the preparation of these propositions or the dictation of the contents of these letters.

10

(Papers shown witness.)

A. I recall this one, marked D5.

Q. Did you prepare that?

A. No. I think that Mr. Naame consulted me about it, and over the telephone, if I am not mistaken, and asked me what would be necessary, and I think I asked him to get his girl, and as I told him what I thought was necessary it must have been taken down on the other end. That was the one marked Exhibit D5. I don't recall these other two.

20

Q. Did Naame consult you about the proposition?

A. He may have, but I don't recall that part of the transaction.

Q. You have some interest in the corporation, titular or otherwise?

A. Never.

Q. Weren't you the secretary of it?

A. No, the name was put on the door when they were in the Commerce Building. That may have been a year or two before this transaction. I noticed the name on there and I told them it was error and that it shouldn't be there.

30

Q. You were never an officer of the corporation?

A. In the beginning I may have had a share of stock but only for the purpose of incorporation.

Q. That will refresh your memory as to that proposition?

(Paper shown witness.)

A. That must be what I was talking about, that needed three directors to organize the company and that I had a share of stock and it was promptly assigned. I never paid anything for it, but merely
10 held it to incorporate.

Q. You say that the conversation between Satinov and Naame with respect to this release took place after October 15? Naame said it took place two weeks after the signing of the agreement of September 4, 1926.

(Objected to.)

20

A. The fact is, I didn't hear all of Naame's testimony. The conversation I speak of was two weeks after settlement.

Q. What date?

A. About two weeks after.

Q. Can't you fix a date? You say it was two weeks after settlement?

A. No.

Q. When was settlement?

30 A. September 15, 1926.

A. When was the conversation?

A. The conversation was about two weeks after.

Q. What day of the week was it?

A. I can't recollect.

Q. Where was it?

A. In my office.

By Mr. Cole:

Q. Did you have an active office in this company?

A. Not that I recall. I never had any financial interest in it.

Q. Did you ever vote stock after its organization?

A. Never.

Q. Were you in the courtroom when Mr. Naame began to testify this morning?

A. No, I was not.

10

Q. Do you recall what time you came in?

A. I came in at 10:25.

JACOB SALSBURG, SWORN.

By Mr. Cole:

Q. Do you know Mr. Satinov?

20

A. I do.

Q. How long have you known him?

A. I met Mr. Satinov probably six or seven years ago.

Q. Do you know Mr. Naame?

A. I do.

Q. How long have you known him?

A. I have known Mr. Naame for seven or eight years.

Q. Do you know the apartment house involved in 30 this controversy?

A. I do.

Q. Was there ever a time when you had any talk with Mr. Satinov in connection with a release of mortgage?

A. Yes.

Q. State as near as you can the date of that talk, where it took place and what it was?

A. Last fall, I think it was October or November, I can't recall dates or the month, I called on Mr. Satinov in Mr. Satinov's office, trying to bring around a good feeling between them and I showed him the different views of different things and one thing and another, and I told him I had heard and I was told, that after Mr. Naame was to complete the
10 building —

(Objected to as to what was told the witness.)

The Court: I will permit it.

Witness. —“that you were to release a piece of ground that he had there.” Mr. Satinov turned around and tells me, “What interest have you got in that, that you come to see me?” I says, “Well,
20 I have helped Mr. Naame to finance that building.” I says, “I am interested in getting some of that money, and I know that he has made provisions to place a mortgage on that piece of ground and I know the man who has put up money for it and from that money,” I says, “I am to get part of it what Mr. Naame owes me. That is why I came to see you.”

Q. What did he say?

30 A. He says, “Well, I am going to tell you. I did promise to release that piece of ground to him but Naame was very sassy to me and didn't carry out certain things.” He says, “I am not going to release that mortgage.” Then I tried to persuade him and from every angle that he was foolish. And we agreed to leave it to an arbitrator, so we called on
—

Q. Never mind that. I don't care about that proposition.

A. After we talked it over he said, "If Mr. Naame will reduce that mortgage from 10 years to 5 years I will still keep my promise."

Cross-examination.

By Mr. Coulomb:

Q. You were interested in this matter because you were relying on it to get some money? 10

A. Yes.

Q. What part had you had in financing this building?

A. No part at all, except towards the last when that building was almost completed, Mr. Naame came to me and told me that he was very—that he needs \$25,000 to complete this building and that just as soon as that building is completed he would 20 finance it.

Q. I am asking you whether or not you loaned money to him in the financing of this building?

A. Yes, that is —

Q. When?

A. I got the money for him through my bank, discounted paper for it.

Q. On the building of this Indiana Avenue apartment house?

A. Yes.

Q. When did you discount notes for it, to get the money for it? 30

A. I think I discounted these notes either in May or June, 1927.

Q. May or June, 1927?

A. Yes.

Q. You hadn't seen Mr. Satinov before that?

A. No, sir, I didn't.

Q. It wasn't until later?

A. It wasn't until later.

Q. Where was that conversation had that you speak of?

A. In Mr. Satinov's office.

Q. You had some other conversations with Mr. Satinov on that day?

A. Yes, we had quite a conversation; I spent
10 pretty near a half day's time on it.

Q. You offered to buy the mortgage?

A. Yes, I did.

Q. For \$185,000?

A. No, sir.

Q. For how much?

A. I offered him \$150,000 for his mortgage.

Q. Why?

A. Why?

Q. Yes.

20 A. Simply because I thought it was a good buy.

Q. You didn't think it was worth \$185,000?

A. Yes, worth more than \$185,000.

Q. It couldn't have been worth more than \$185,000
could it?

Mr. Cole: Are you referring to the mortgage or
the property?

30 Q. What I want to know is, what made you offer
him \$150,000 for a mortgage which you say you
think was worth more than \$185,000?

A. I think I went up to \$160,000.

Q. Why didn't you go to \$185,000?

A. I wouldn't buy a 10 year mortgage for \$185,000
at 6%.

Q. You didn't think it was much of a mortgage?

A. Yes.

Q. But you didn't want to buy it unless you could get it at a \$25,000 discount?

A. You can't blame me for trying to buy a mortgage for a discount, do you?

Q. You didn't think that the mortgage was worth buying unless you could get it at a \$25,000 discount?

A. I think the mortgage was worth more than \$185,000, but I wasn't in position to buy the mortgage for any more money. 10

Q. You did offer, after starting, \$135,000?

A. No, never offered \$135,000.

Q. You finally got up to \$160,000?

A. He was the one; he offered me. He said, you're the one to take the mortgage.

Q. That isn't the way you started?

A. I didn't go in there to buy a mortgage. I went in there —

Q. To get your \$25,000? 20

A. Then he turned around and wanted to sell me the mortgage. Then he asked me to make him an offer, which I did.

Q. You were interested, if you could get it, in getting your \$25,000, notwithstanding this mortgage was worth all you say it was?

A. Mr. Naame was upside down. He couldn't get the money to finance the building on that piece of property. He told me his condition so I went up to talk to Satinov. I knew Satinov and thought I could probably bring around a good feeling. 30

Q. Are you interested in the Naame Company?

A. No, sir.

Q. Sure of that?

A. Positively.

Q. You never were interested in it?

A. Yes.

Q. When did your interest cease in it?

A. About four years ago.

Q. You have had no interest in it since?

A. No, sir.

JOSEPH S. NAAME, recalled.

10 By Mr. Cole:

Q. Since going back to your office have you located the plans?

A. I found all I could find there.

Q. Are you producing all the plans you have found?

A. Yes.

Mr. Cole: We offer in evidence all these plans.

20 Cross-examination.

By Mr. Coulomb:

Q. How many sheets are in the pile of plans you produce?

A. I don't know. I will look.

By the Court:

30 Q. How many?

A. Five.

By Mr. Coulomb:

Q. Are all the sheets which you have produced, marked Exhibit P1, do they all relate to the same building?

- A. Yes.
- Q. When were they prepared?
- A. When they were first brought in.
- Q. When were the plans first produced?
- A. In the fall of 1926.
- Q. What time in the fall?
- A. From September to October.
- Q. Do they show a building having 172 apartments or 100 apartments?
- A. This one shows 172 apartments. 10
- Q. Is there any approval of the State department attached to these plans?
- A. They do.
- Q. What is the date of it?
- A. October 19, 1926.
- Q. How long before that was it that you consulted them in respect to it—as to the approval of these plans?
- A. That I couldn't tell you. I went to Newark and interviewed personally one of the department 20 employees who said we could go ahead, substantially, with it, that it would take several weeks to mail them back to me and that whatever changes they made, minor changes, they would mark.
- Q. Are they the plans you have?
- A. These plans I left with them.
- Q. They are the plans you originally prepared?
- A. These are the plans originally prepared and submitted to the State.
- Q. There were other plans prepared, prior to 30 these plans?
- A. Yes, there were two or three sets prepared prior to these.
- Q. You haven't those?
- A. No, because we tear them up for fear of getting them mixed up with plans no longer in use.

Q. Is there any date on them to show when they were made?

A. No; they seldom date them. There is no date on them.

Q. When were they filed with the building department in Atlantic City.

A. November 10, 1926.

10

LOUIS SATINOV, sworn.

By Mr. Cole:

Q. What is your relation to the defendant corporation?

A. I am president.

Q. When was the company incorporated?

20 A. I couldn't tell you that.

Q. About when?

A. A few years ago.

Q. Have you always been its president?

A. Always.

Q. Who are the other officers?

A. My wife is secretary-treasurer, Mr. Smith of the Atlantic Safe Deposit & Trust Company is secretary.

Q. How many stockholders are there?

30 A. Three of us, that is all.

Q. How many shares outstanding?

A. Three shares.

Q. Is that all?

A. 3000, all.

Q. Who owns them?

A. I own 1000, my wife owns 1000 and Mr. Smith owns 1000.

- Q. Have you the minutes of the company here?
A. No, sir, I haven't them here.
Q. Where are they?
A. In Philadelphia.
Q. Who are the directors of this corporation?
A. My wife and myself.
Q. You and your wife signed the agreement between your company and the Naame company?
A. Yes.
Q. Who negotiated the agreement? 10
A. Mr. Clevenger.
Q. Who negotiated it on behalf of the corporation?
A. Mr. Salsburg and —
Q. Who negotiated the agreement between your company and Mr. Naame, on behalf of your company?
A. Mr. Mandel.
Q. Who was representing you?
A. No, not representing me. Mr. Naame came to 20 talk to me personally about it.
Q. I seem to have trouble in making the witness understand. Who represented your corporation in arranging the terms of the agreement?
A. Myself.
Q. Can you produce these minutes?
A. Yes.
Q. Will you produce them? I ask for production of these minutes.

30

The Court: It may be done.

- Q. Who actually kept the minutes of the corporation?
A. Who kept the minutes?
Q. Yes. Who wrote the minutes of your corporation?

A. Myself.

Q. Who signed them?

A. My wife and myself.

Q. Has the company ever declared a dividend?

(Objected to.)

A. No.

10

The Court: I will permit it.

Q. Never declared a dividend?

A. No, sir.

Q. Has it ever issued a dividend?

A. Yes.

Q. How much issued since its incorporation?

A. I can't tell you.

20

(Objected to as immaterial and irrelevant.)

Q. I will ask it in this way. Has any dividend ever been paid to Mr. Smith whom you say is a stockholder?

A. No.

Q. Has any been paid to your wife?

A. No.

Q. Has ever any been paid to you?

A. No.

30

Q. Are you salaried?

A. No.

Q. Is your wife salaried?

A. No.

Q. Do you regard Mr. Smith as a bona fide holder of his shares of stock?

(Objected to.)

Q. —and entitled to a dividend; or, is he just holding it for your benefit?

(Objected to.)

The Court: It is permitted. You may answer.

A. Just holding it for my benefit.

Q. How is it your wife is not holding her shares for your benefit? 10

A. I don't know exactly how that stands, but it shows as my wife. That is all there is to it.

Q. Did she pay anything for it?

(Objected to as immaterial and irrelevant.)

The Court: It is permitted.

Q. Did she pay anything for it?

A. No. 20

Q. If any capital was ever paid into the corporation who paid it?

(Objected to as immaterial and irrelevant.)

The Court: It is permitted.

A. I did.

30

JOSEPH S. NAAME, recalled.

By Mr. Cole:

Q. My recollection is that you testified in substance on cross-examination that the time of the

agreement that you allege was made for the release of the mortgaged premises was about two weeks after the making of the agreement. I ask you whether or not you care to change your testimony or explain that?

A. I will explain my testimony this way. I got in my mind it was very shortly after, two or three weeks after, the signing of the paper. It may have been at the settlement because I signed an agree-
10 ment; I also signed a mortgage at the title company. The only thing I have in mind is, it was after the signing of one of these papers, but I don't know which one it was exactly.

Q. Did you have more than one conversation with Satinov prior to the one in Salsburg's office?

A. No, that was the first time.

Cross-examination.

20 By Mr. Coulomb:

Q. In your direct examination you testified it was two weeks after the signing of Exhibit DX4.

A. You talked about settlement and the agreement.

Q. And I showed you the agreement and asked you if it was before the signing of the bond and mortgage and you said "yes." How can you change that now?

30 A. That was a year ago. All I can remember is, it was a short time after the signing of these papers; it may have been the settlement, it may have been the agreement. I can't swear to that, but I am certain it was two weeks after one of those dates.

Q. You said in cross-examination when first on the stand that the conversation you had with Satinov was before you signed the bond of \$200,000?

A. That I don't remember, when I signed the bond.

Q. You don't remember any details of this matter?

A. Yes, I remember the most important points of it. I can't remember the dates to the day.

Q. When you consulted Judge Cole with respect to the bill of complaint in this matter did you discuss with him the facts of the case?

A. I did.

10

Q. Did you know it was in the bill that the agreement was made two weeks after that alleged agreement with Satinov was made, two weeks after the agreement of September 4, 1926?

A. That is right.

Q. Is that what you told Judge Cole?

A. Yes.

Q. Was Mr. Salsburg in that conversation with you and Judge Cole at the time the facts were discussed so that the bill could be prepared?

20

A. I presume he was. I met him at different times.

(Witness withdrawn.)

Mr. Cole: Our bill described the land which we claim should be released, and while we haven't put in proof, evidence to show the exact description, do you make a point against it and require a survey?

30

Mr. Coulomb: Yes, it touches an agreement concerning land.

Mr. Cole: Is there any question as to the accuracy of the description of land unoccupied, which we say was to be released?

Mr. Coulomb: I don't know whether there is any question about it or not. There does seem to be some confusion about it. As to the question of any land to be released, as to apartments or otherwise, there seems to be some doubt about it.

Mr. Cole: We rest and ask that we be allowed time, until we have had an actual survey made, to offer this proof later. We are not prepared to
10 offer this proof now.

The Court: I will permit you to offer that proof later. I will give you an opportunity to open for that.

PLAINTIFF RESTS.

20

30

Atlantic City, New Jersey, April 12, 1928.

Before VICE-CHANCELLOR INGERSOLL.

PRESENT OF COUNSEL:

CLARENCE L. COLE, Esq., for complainant.
HARRY R. COULOMB, Esq., for defendant.

10

DEFENDANT'S TESTIMONY.

WILLIAM M. CLEVINGER, SWORN.

Direct examination.

20

By Mr. Coulomb:

Q. Did you represent the Satinov Company in the preparation of an agreement dated September 4, 1927, for the sale of property on Indiana Avenue?

A. Yes, I prepared the agreement.

Q. I show you an agreement which has been marked D1.

(Paper shown witness.)

30

A. Yes, that was prepared in my office and executed in my office, as I recall.

(Defendant's Exhibit No. 1 offered and admitted in evidence.)

Q. At or before the time of the execution of that agreement, now defendant's Exhibit No. 1, had there been any suggestion made by the Naame Company with respect to the inserting in that agreement provisions for releasing any part of the lands under that mortgage?

(Objected to.)

10 The Court: It is permitted.

A. No, they couldn't be, because —

Q. No—were there?

A. No.

Q. Were there any suggestions made at that time as to releases under the mortgage?

(Objected to.)

20 The Court: It is permitted.

A. No.

By Mr. Coulomb:

Q. Did you attend the settlement?

A. I did.

Q. That settlement was to be at what time?

A. October 15, 1926.

Q. Where?

30 A. Chelsea Title & Guarantee Company, this city.

Q. Who, if anyone, was present besides yourself?

A. Mr. Satinov, Mr. Naame, Mr. Salsburg, the Settlement Clerk; and it just runs through my mind that Mrs. Satinov was sent for and came in later.

Q. Was the bond and mortgage prepared at that time?

A. Had been prepared.

Q. By whom?

A. By me.

Q. Were they executed?

A. They were.

Q. Had the deed been prepared by the Satinov Company to the Naame Company?

A. Yes, prepared by me.

Q. Was that deed executed and delivered at that time?

A. Yes.

10

Q. I show you a form of bond and ask you whether or not that bond was prepared by you?

A. Yes, and executed at the same time and the same place.

Q. Prepared by you?

A. Yes.

Mr. Coulomb: I offer in evidence this bond.

20

Mr. Cole: Objected to as immaterial and irrelevant.

(Bond marked D2 and admitted.)

Q. Was there any conversation at the date of the settlement, at or before the execution or delivery of these papers respecting the insertion in either the bond or mortgage, of a release clause providing for the release of any part of the land, upon any condition whatsoever?

30

Mr. Cole: Objected to as immaterial.

The Court: The question is permitted.

A. No, sir.

Q. Were there any requests or discussion as to any insertion, as to any change of provision contained in the bond for \$200,000, which is Exhibit D2, providing any change in the character, location or description of the buildings to be located on the plot?

Mr. Cole: Objected to.

10 The Court: The question is permitted.

A. No.

Q. After October 15, 1926, which was the date of the settlement, did you have any further connection at all with this matter?

A. Yes.

Q. Tell us about when it was?

A. I don't know. I can't do so now, but if I have the right to go to the office and examine the stenographer's notes I can tell you, approximately.

20 Q. What was the subject matter of your consultation relative to this transaction?

Mr. Cole: With whom?

Mr. Coulomb: With anybody.

A. I will lead up to it.

30 (Objected to.)

(Objection sustained.)

Q. What was the subject matter?

Mr. Cole: That is objected to unless it is shown what it is.

(Objection sustained.)

A. If you ask me who was present?

Q. Who were present?

A. Mr. Satinov, Mr. Naame, Mr. Salsburg and myself.

Q. Where was the discussion or consultation?

A. My recollection is that ultimately it ended in a consultation.

10

By Mr. Cole:

Q. Where was it?

A. It ultimately ended in a consultation with all four parties present in my office, but the beginning of the conversation commenced with Mr. Naame, by himself; then along came Mr. Satinov by himself, then Mr. Salsburg, by himself.

Q. Finally all four?

A. Finally all four got into the office and that is where the conversation ended.

20

Q. What was the conversation with Mr. Naame?

Mr. Cole: Won't you fix the date?

A. I can't. I can approximately tell you, this; it was after the agreement of September 4th, 1926, and it was after the record of the mortgage from the Naame to Bessie Satinov, dated October 15, 1926.

30

Q. Is that the mortgage in question here?

A. That is the second mortgage involved in the transaction.

Q. Do you know the date of that?

A. Yes. The date of it is October 15, 1926. It had then been recorded, because I have looked, and the

date of the record in this paper—I can give you the exact date of the dictation of this paper from my stenographer's notes, if I have the opportunity to examine them.

Mr. Cole: I would like to ask what the testimony is going to be along this line. It is hard otherwise for me to object to it.

10 The Court: I will permit it.

Mr. Coulomb: We have the right to present our own case.

The Court: I will give you an opportunity to strike.

20 Mr. Cole: I object on the broad grounds that it is entirely too general; as to whether it is going to be general, or not.

Q. With whom was your conversation—Mr. Naame?

A. Mr. Naame first came to my office.

Q. What did he want?

30 A. He wanted a contract and agreement so as to permit him to build an apartment house instead of an apartment house and garage, and I told him I couldn't tell him anything about the transaction, that he would have to take it to Mr. Salsburg.

Q. Did Satinov afterwards come to your office?

A. Yes.

Q. Then after that, what?

A. The first proposition was when Mr. Satinov came to my office that the apartment house was to have 100 rooms.

Mr. Cole: Do we have Mr. Naame present, now?

A. No, that was Mr. Naame's proposition, as I recall it, 100 rooms.

Q. Mr. Naame got there?

A. Before Mr. Satinov gave me instructions what to do. Following his instructions, I prepared the proposed agreement in the rough. Then Mr. Salsburg came up and looked over the paper and made some suggestions and it went up then to 172 rooms; and the garage to be left off. Then they all came up together and when we met together somebody proposed, I think it was Mr. Naame or Mr. Salsburg, that there should be a release clause covering the land not to be occupied by the garage, when the second story brick wall was to be completed; and Mr. Satinov absolutely rejected the whole proposition. 10

Q. Were there any memorandums or scale on any contract or release, drawn by you at that time? 20

A. Yes.

Q. Is that the paper you have in your hand?

A. That is the paper I have.

Q. Who was present when that was drawn or dictated?

A. When that was drawn or dictated, that particular part of it, nobody but myself and my stenographer. When the pen and ink and lead pencil marks were put on there, all four of us were present.

Q. Was that paper drawn and dictated by you prior to your meeting with Mr. Naame that you just described, or after your meeting with Mr. Naame? 30

A. After Mr. Naame came to the office first, and after Mr. Satinov came second, he told me to get up a minute of what we had talked about.

Q. Was it from that information that this pro-

posed release or contract was drawn, that you have in your hand?

A. Yes.

Q. When was the discussion of the terms of that taken up with Naame, if at all?

A. After the typewriting was done and after the discussion progressed, I noted on it the things proposed.

Q. Was it ever executed?

10 A. No, sir, it was rejected.

Q. By whom?

A. By Satinov.

Q. Can you get us the date of that rejection?

A. I can't now, but if I get my stenographer's notes I can tell you when it was.

Q. It was October 15th?

A. It couldn't have been before, otherwise I couldn't have recited the record of the Bessie Satinov mortgage.

20 Q. Do you know what was said, if anything, by Naame, when the proposed release was finally rejected by Satinov?

A. The meeting broke up. I don't recall the conversation.

Q. Were you ever consulted after that time by Satinov relative to any proposed changes in the agreement or mortgage?

A. Yes, I was consulted about the mortgage.

Q. Can you tell us when that was?

30 A. I was consulted from time to time during the progress of the construction of the building as to whether or not it was entirely proper for Mrs. Satinov to advance the cash under the terms of the \$15,000 second mortgage which I had recited in this agreement. Then after that was completed, August 3, 1927, I was consulted concerning the terms of the mortgage.

Q. Who was present at that time?

A. Nobody but Mr. Satinov. That was carried on by correspondence with Mr. Naame.

Q. By correspondence with Naame?

A. Yes. That related to the calling of the mortgage.

Q. Did it have any relation to the releasing of any part of the mortgage or displacing any part of the mortgage and the substitution of another mortgage?

10

A. No, sir.

Q. I show you defendant's Exhibit No. 5 which is a proposition from Naame to Satinov, and ask you whether or not you were consulted with respect to that?

(Shown witness.)

A. I never remember Mr. Satinov having advised with me concerning that matter.

20

Q. I show you two other Exhibits, D3 and D4, respectively, and ask you whether or not you remember Mr. Satinov having consulted with you with respect to any proposition contained in either of these letters?

(Shown witness.)

A. I have no recollection of having consulted with Satinov concerning D5. And with regards to D6, I have a distinct recollection of Satinov having brought that to me and I advising him not to do as it requested.

30

Q. Was it on or about that date?

A. It is my recollection that he came in that same day that he got it from Naame and I told him not to comply with the request.

Q. And as to the other two you say you have no recollection concerning them?

A. No, sir, I have no recollection concerning the other two.

Q. When the suggestion was made, as I understand was made, that the release clause should be put in writing, who made the request?

A. Either Mr. Naame or Mr. Salsburg.

10 By Mr. Salsburg:

Q. Is that the original draft?

A. That is the original draft.

Mr. Coulomb: I would like to ask whether or not the copy he offered when Salsburg was on the stand was a copy of this agreement or a copy of the one that preceded the September 4th agreement. I understand that it was the one that preceded the Sep-
20 tember 4th agreement.

Mr. Cole: I am not clear that it was offered in evidence. There was objection made to it.

The Court: C1 was the only one offered in evidence with the plans. That is my recollection.

Mr. Coulomb: The paper was put on the desk. I
30 withdrew my objection to it, some question about it being a collateral issue.

Mr. Cole: It seems to me that either this was offered or some question asked about it, in view of the examination of Mr. Naame, and that I thought it was admissible. I offer it in evidence now.

The Court: What is it? I haven't any idea what it is.

Mr. Cole: This paper that counsel alluded to, as I recall it, in the cross-examination of Mr. Naame.

Mr. Coulomb: I asked Mr. Naame whether at any time prior to the memorandum of agreement of September 4th there had been any request for a release, and that led up to an offer of this paper which I understand, at that time, was the paper preceding the September 4th agreement. 10

Witness: That is not this paper.

The Court: Is it marked at all?

Q. Referring again to the memorandum which you have been testifying about, when the paper after having been written from your dictation was finally discussed in this consultation in which Mr. Naame and Mr. Satinov and Mr. Salsburg were present, how did it come that these alterations were made or suggested, if you remember? 20

A. I don't know. All I can tell you is that this paper was rejected because of the release clause.

Q. Then do I understand that after making ——

Mr. Cole: Objected to. Tell what actually happened. 30

Mr. Coulomb: I offer in evidence this paper, being memo produced by Mr. Clevenger, prepared by his dictation from information furnished by Naame and Satinov and afterwards discussed in consultation with Satinov, Naame, Salsburg and Clevenger,

upon which there are appended the alterations so suggested; which paper was finally rejected by Mr. Satinov.

Mr. Cole: Objected to.

(Objection overruled.)

(Paper marked for identification.)

10

Witness: There may have been something done, but I know nothing about it.

Q. They ended up without signing this paper, or —

A. They rejected it.

Mr. Coulomb: May I suggest that perhaps we can avoid some delay, if the Vice-Chancellor consent, if Mr. Clevenger call his office and get the date?

20

Witness: I would have to do that. I may have to get Miss Applebaum. Perhaps I can read her notes. Sometimes I can.

Q. At the time the agreement of September 4th, 1926, was signed, and which is Exhibit D1, did Mr. Naame declare or say what he was going to build on the land?

30 A. Yes. That was in the agreement.

Q. Had any plans been prepared at that time, that you had seen or known of?

A. I have no recollection of having seen the plans at any time.

Q. As I understand, the agreement called for an apartment house containing not less than 100 one or two-room apartments?

A. That is correct.

Q. Do you recall whether there was any provision that it should be limited to one hundred?

Mr. Cole: Objected to.

(Objection sustained.)

Mr. Coulomb: Mr. Naame has contended that he was to build a 100-room house, apartment house. He stressed the point that there were to be one hundred. I think it is important. 10

Mr. Cole: The agreement speaks for itself, and Mr. Clevenger cannot express the intent of some one else.

(Objection sustained.)

Cross-examination.

20

By Mr. Cole:

Q. The settlement to transfer the property under the terms of the agreement of September 4th, 1926, as I understand, was October 14, 1926?

A. October 14th.

Q. Did the talk that took place with Mr. Naame and Mr. Satinov and you take place after that date?

A. Yes.

Q. And that is the date that you are not now able to give us definitely? 30

A. No, I can't.

Q. I show you an unexecuted paper with the caption, "This copy for correction and not for execution," ask you to look at it and say whether or not that was prepared by you and in your office?

A. The typewriting was done in my office.

Q. At whose request did you draw that paper?

A. My recollection is that Mr. Satinov, Mr. Naame and Mr. Salsburg came into my office and discussed the situation and that as a result of that discussion that paper was prepared.

Q. Was that before or after the execution of the agreement dated September 4th, 1926?

A. Before.

10 Q. I notice that this paper says it is between the Satinov Corporation on the one hand and the Lincoln Hotel Apartment Company on the other.

A. Yes, that was the information given me at the time.

Q. That paper, then, was never executed?

A. No.

Mr. Cole: I offer in evidence this paper, marked
20 C2 for identification.

Q. Was there more than one meeting in your office after the settlement, at which Mr. Naame was present?

A. Mr. Naame was in my office after that settlement a couple of times, but I can't remember when.

Q. At which Mr. Satinov was present, other than the one that you have related?

30

By Mr. Coulomb:

Q. Two, at least?

A. My impression is that they were there together several times, but I won't attempt to tell you what about.

By Mr. Cole:

Q. You are not clear about that?

A. No, I am not clear about that. As I understand, I am to go back to the office and look up the exact date?

Mr. Coulomb: If you please.

10

LOUIS SATINOV, recalled.

By Mr. Coulomb:

Q. Do you recall the time when you executed the agreement marked DX1 between your company and the Naame company, for the sale of property on Indiana Avenue?

A. I do.

20

Q. That was executed, signed and delivered in Mr. Clevenger's office?

A. Yes.

Q. At that time, so far as you know, did Mr. Naame have any plans prepared for the erection of any building on this lot you were selling?

A. He didn't have any.

Q. How do you know that?

A. He told me and he told Mr. Clevenger that.

Q. Between the time of the making of this agreement of September 4, 1926, and the date of settlement at the Title Company, October 15, did you have any conversation with Naame relative to the change of any terms of the agreement of September 4th?

30

A. No, sir.

Q. Do you recall the settlement at the Chelsea

Title Company, when a bond and mortgage was delivered by you and you given a deed?

A. Yes.

Q. At the settlement itself, at the Chelsea Title Company's office, the date of settlement being October 15, 1926, was there any suggestion by Naame or any request by Naame that there should be any change in the methods of handling this mortgage as to the releasing of any portion of the land from its
10 lien?

A. No, sir.

Q. Between those two dates, that is, September 4, 1926, and October 15, 1926, did Naame have any discussion with you concerning his proposed plans for the building of the building of the property?

A. He did.

Q. What was that discussion?

A. He said he went to Newark to get a certain permit and they refused him a permit to build a
20 garage underneath the apartment house; that they refused him.

Q. Was that all of the conversation you had?

A. That is all.

Q. Relative to the building?

A. That he would have to change his plans.

Q. After October 15, when, if at all, did you have any conversation with Naame relative to any change in the agreement of September 4, 1926?

A. At no time.

30 Q. Did you and he and Mr. Salsburg go to Mr. Clevenger's office for the purpose of making some other agreement?

A. Not to my recollection, no.

Q. You never went to Mr. Clevenger's office after October 15, at which some change in the agreement was suggested by Naame and discussed by you and Mr. Salsburg with Mr. Clevenger?

A. No, sir.

Q. You don't recall it?

A. No, sir, I do not.

Q. Were you ever in Mr. Salsburg's office when Naame was there and there was any discussion as to any change in the mortgage; that is, that you were to release part of the mortgaged premises, the land covered by the mortgage, upon the assurance that Mr. Naame would extend or increase the size of his apartment house? 10

A. I remember being in Mr. Salsburg's office. I went in to pay him a bill for a legal matter and he told me then that I promised to release him certain land. I told Mr. Salsburg I didn't make such promise at all.

Q. When was that conversation in Mr. Salsburg's office?

A. I don't remember the date.

Q. Was it after making the bond and mortgage, after settlement? 20

A. Yes, considerable after that.

Q. Did you ever consult Mr. Salsburg?

A. Pardon me, but ——

Q. Do I understand the date of this bill will fix the time of your conversation with Mr. Salsburg?

A. Yes.

Q. What is the date of it?

A. January 25, 1927.

Q. After settlement, October 15, 1926, did you ever meet Mr. Naame and discuss with him the character of the buildings he was going to erect on this land? 30

A. No, I did not, sir.

Q. Did he ever come to you with any plans for any buildings?

A. He did come to me with a release, wanted me to release lots, on several propositions.

Q. I show you three papers and ask you whether or not those three papers contain the propositions which he presented to you on one or more occasions, with respect to releasing your mortgage and part of the lot and replacing it or permitting another mortgage to replace it?

A. Yes. On February 18, 1927, Mr. Naame came to my office.

Q. Who was present?

10 A. At that time, no one. He says to me, "Mr. Satinov, I am up against it. I expect some money from the Hotel President Company. They owe me \$40,000 to \$45,000 and ain't produced and I haven't enough money to build a garage. I tell you what I do. I can get a first mortgage, if you cancel your mortgage, I can get a first mortgage of \$200,000 on this property, pay you off \$50,000 cash and you take back a second mortgage of \$135,000, not including the lot. Your security will be just as good."

20 Q. Not including what lot?

A. The empty lot which my mortgage calls for.

Q. At that time your apartment house was started?

A. Yes.

Q. How much of it had been built?

A. I couldn't tell you exactly, but considerable. The framework was going up, I believe.

Q. Was there a piece of vacant lot there alongside of the structure?

30 A. Yes. He said, "If you do that, release the lot to me, and take back a second mortgage of \$135,000 on the building, I could then borrow money to build the garage."

Q. Did he have any written proposition with him at that time?

A. Yes, it is right in my hand.

Q. What is the date of it?

A. February 18, 1927.

Q. Read it.

A. "February 18, 1927. Joseph S. Naame Company, 206 Commerce Building, Atlantic City, N. J. Dear Sir: It is hereby mutually agreed and understood that in the event of the Joseph S. Naame Company succeeding in placing a first mortgage on property known as the Lincoln Apartment House, located on North Indiana Avenue between Atlantic Avenue and Arctic Avenue, Atlantic City, N. J., said property being now constructed on land purchased from the Louis Satinov Real Estate & Mortgage Corporation, that said Louis Satinov will release the present mortgage of \$185,000 now held by said Satinov Mortgage Corporation for the new mortgage which will be placed on the aforementioned property, provided, however, that all moneys realized on the new first mortgage over and above the sum of \$150,000 will be paid over to the said Satinov Mortgage Corporation, to be applied to the principal of the present first mortgage which will then become a second mortgage, and provided, however, that the sum of at least \$50,000 shall be paid over to the said Louis Satinov Mortgage Corporation." 10 20

Q. What did you do with that proposition?

A. I refused it entirely; told him I wasn't going to take no second mortgages.

Q. Did you have any other conversation with him that had reference to the first mortgage and its release of the land?

A. No, sir, not that date—pardon me, February 18th. That is right. 30

Q. What happened on that same date?

A. In the afternoon he called me and he said, "Mr. Satinov, I have two New York fellows working for me to get a \$200,000 first mortgage bond issue and if you will take \$185,000 for your mortgage,

if you take the first mortgage gold bonds at 6% interest and Mrs. Satinov will take \$15,000 for her mortgage, I will take \$100,000 myself which I can distribute myself among people I know. That makes \$300,000. They will sell it for me. That first mortgage will only cover the building. Then I have the lot free to put a building on." I said, "That looks good to me. I would just as leave have bonds as a mortgage, if it is approved by Mr. Clevenger."

10 Q. Was that in writing or orally made?

A. In writing.

Q. How was it communicated to you first, in writing or verbally, over the telephone or how?

A. At first he told me to come up. I said, "You arrange a letter in writing and I will take it up with Mr. Clevenger and if he approves it I will accept it."

Q. Did he do it?

A. Yes.

20 Q. Did he put it in writing?

A. Yes.

Q. That was the letter dated February 18?

A. Yes.

Q. What did you do with the letter of February 18?

A. I took it to Mr. Clevenger.

By Mr. Cole:

30 Q. And he told you not to sign it?

A. No, he said —

(Objected to.)

By Mr. Coulomb:

Q. Did you have any further communication with Naame? Read that. (Witness shown paper.)

A. "Joseph S. Naame Company, 206 Commerce Building, Atlantic City, N. J. Dear Sirs: It is hereby mutually agreed and understood that in the event of the Joseph S. Naame Company succeeding in placing a bond issue on property known as the Lincoln Apartments, located on North Indiana Avenue between Atlantic Avenue and Arctic Avenue, Atlantic City, New Jersey, being formerly the property of the Satinov Corporation, that said Louis Satinov Corporation will buy, purchase or take in lieu of the present first mortgage of \$185,000 on the above mentioned property, \$185,000 in 6% net gold bonds, said gold bonds to be secured by the above mentioned Lincoln Apartments. It is also hereby agreed that Bessie Satinov will purchase, and take in lieu of her present second mortgage of \$15,000, the sum of \$15,000 gold bonds." 10

Q. Did you sign that?

A. No, sir, because Mr. Naame couldn't have this bond issue guaranteed by the bonding company and I therefore refused to sign the letter. 20

Q. Did you have any further communication with Naame?

A. Yes.

Q. With respect to that mortgage?

A. On February 18, 1927.

Q. Where was that?

A. At my office.

Q. Who were present?

A. My wife. 30

Q. Who else—yourself?

A. Myself.

Q. Did Naame make his proposition orally or in writing at first?

A. Orally, at first.

Q. What did he say?

A. He said, "Mr. Satinov, I have tried my best

to get money to build a garage, but it seems to me I have failed." He said, "I couldn't discount the President Hotel notes at all and I haven't any money to build a garage on it." He said, "I was promised a second mortgage of \$175,000 by a party by the name of Solen. Now, if you will release that lot to me to secure this, if you will release the lot I will then be able to borrow money on the lot to build a garage."

10 Q. What did you say to him with respect to that proposition?

A. I told him to make it in writing and I will take it to Mr. Clevenger.

Q. Did he make it in writing?

A. He did.

Q. Is that paper you have in your hands the writing he gave to you?

A. Yes.

20 Q. Was it on the same day or a subsequent day to your conversation?

A. The same day.

Q. What is the writing? Just read it.

30 A. "February 28, 1927. It is hereby mutually agreed and understood that in the event of the Joseph A. Naame Company succeeding in placing a second mortgage on property known as the Lincoln Apartments, located on Indiana Avenue between Atlantic Avenue and Arctic Avenue, Atlantic City, N. J., said property now being under construction, recently purchased from the Louis Satinov Corporation, and for and in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, will release the fifty-two feet of unoccupied land, on Indiana Avenue bounded by Brighton Place; said fifty-two feet now being included in the first mortgage held by the Louis Satinov Corporation."

Q. What did you do with this proposition?

A. I took it up with Mr. Clevenger.

Q. Did you sign it or not?

A. Mr. Clevenger advised me not to sign it, not to do any signing, not to release.

Q. You didn't do any signing?

A. No, sir.

Q. At any time, either in Mr. Salsburg's office or the office of anyone else, did you agree that upon completion of the apartment house with 172 apartments in it, that you would release the adjoining land which had been intended for a garage? 10

A. I did not.

Q. Did you ever make any such terms of agreement with anybody, either Naame himself or anyone representing Mr. Naame?

A. No, sir, I did not.

Q. Did you know at the time that you entered into a contract with Naame on September 4, 1926, of your own knowledge, the size other than that set forth in the agreement, of the building that Mr. Naame was to build there? 20

A. Mr. Naame himself didn't know that.

Mr. Cole: Objected to and ask that it be stricken.

Q. Did you know?

A. No, sir, except what Mr. Naame tells.

Q. Did you ever see any plans for the building?

A. I did not.

Q. For either building? 30

A. No, sir.

Q. What character of building has Mr. Naame erected on that property at the present time?

A. I couldn't tell you the character of the building.

Q. Have you seen it?

A. Yes, many times.

Q. Is it an apartment house?

A. I believe it is a hotel or apartment house.

Q. He erected it on what part of the lot?

A. On part of the lot he bought from me.

Q. Is there any vacant land there?

A. Yes.

Q. Did he pay you any cash for the lot when he purchased it?

10 A. No, sir, he didn't pay me one cent. I took back a purchase money mortgage of \$185,000. He said he didn't have the money to put in the ground; that he has that money for building.

Cross-examination.

By Mr. Cole:

20 Q. Did Mr. Salsburg ever have any talk with you about your agreement to release that property, before this date in February, when you say you paid him money—I mean January?

A. I don't think so, Judge.

Q. Did you ever have any afterward?

A. I don't recollect.

Q. When was it—after the settlement of October 15, 1926, that Mr. Naame asked you to release the vacant lot?

A. Sometime in February.

30 Q. That was the day or thereabouts when this paper dated February 18 was handed to you?

A. Yes.

Q. Do these three papers express what he told you verbally?

(Papers shown witness.)

A. Yes.

Mr. Cole: I offer these papers in evidence, Exhibits PX4, 5, and 6.

(Admitted.)

By Mr. Coulomb:

Q. Did the Satinov Company, the defendant in this case, ever, by resolution of its directors or resolution of its stockholders, authorize you to make an agreement to release the mortgage from the vacant land? 10

A. Yes.

Q. In consideration of the building by Mr. Naame of a different size apartment house?

A. No, sir.

Q. Or any other resolution to that effect?

A. No, sir.

Q. Providing for the lease of land from the effect of the mortgage? 20

A. No, sir.

By Mr. Cole:

Q. Did the directors of the corporation meet and confer about the making of this agreement of September 4, 1926?

A. Yes.

Q. Is that in the minutes?

A. I couldn't tell that. 30

Q. You are going to produce that?

A. We have the copy.

Q. You are going to produce the minutes?

A. Yes, we have a copy right there.

Q. They will show it?

A. We have it right here.

Mr. Cole: I want the book.

Mr. Coulomb: We want this, too.

MRS. BESSIE SATINOV, SWORN.

10 By Mr. Coulomb:

Q. What is your full name?

A. Bessie Satinov.

Q. You are the wife of Louis Satinov?

A. I am.

Q. The president of the company?

A. Yes. I am secretary and treasurer.

Q. You are the wife of Mr. Satinov, who is president?

A. Yes.

20 Q. And your office is what?

A. Secretary and treasurer.

Q. How long have you had that office?

A. Since the corporation has been in existence.

Q. Were you present at the office of the Satinov Corporation on February 28, 1927, when Mr. Naame called?

A. I was in the office that day.

Q. Where was the office?

A. 307 Guarantee Trust Building.

30 Q. Atlantic City?

A. Yes.

Q. Who was present beside yourself?

A. Just my husband and I.

Q. Did you either hear or listen to the conversation that Mr. Naame had?

A. Yes, I did.

Q. What did he say?

A. He came in and he said he was in an awful way, an awful fix, that he had a lot of trouble and was trying to get money to build a garage on this ground, but that he finally succeeded in getting a promise of \$175,000 for a second mortgage from Mr. Solen, but that would just about cover the obligations, but if my husband was good enough to release the lot he could raise money to build a garage.

Q. What lot was to be released?

10

A. The vacant lot adjoining the building.

Q. Was that building started to be erected at that time?

A. Yes, it was started.

Q. It was partly up?

A. Partly up, yes.

Q. Did he have any written proposition with him at that time?

A. No, but my husband said, "If you bring me a proposition in writing I will see my attorney and see what he thinks about it."

Q. Did Mr. Naame afterwards bring a proposition to you in writing?

A. Yes, he afterwards came back with a paper.

Q. Did you see the paper yourself?

A. Yes, I read it.

Q. I show you a paper, Exhibit D6, which is the paper you see and the one you have before you now.

(Witness shown paper.)

30

A. Yes, this is the writing.

Q. What did Mr. Naame do with it?

A. Mr. Satinov went up to Mr. Clevenger and afterwards came back and said he was very sorry.

Q. Was Mr. Naame there then?

A. He was there, yes.

Q. What did Mr. Satinov say?

A. He said he was very sorry; he couldn't help him because Mr. Clevenger didn't approve it.

Q. What did he say then?

A. He spoke a little more and then left the office.

Q. At that time did he say anything about a previous agreement with Mr. Satinov, on behalf of the company and himself relative to a release of this vacant lot?

10 A. No, he was just kind of upset about things because he couldn't get things the way he wanted it.

Q. What did he say to you or Mr. Satinov when Satinov came back and said Mr. Clevenger wouldn't permit him, or advise him to sign this paper?

A. He seemed very much put out about it because he said it was hard for him to get money.

Q. Did he stay there after that, at all?

A. No, not so very long.

20

Cross-examination.

By Mr. Cole:

Q. When was work begun on the building?

A. Sometime in the fall of the year. Settlement was October 15, and it was supposed to take place right away.

Q. Were you there when work was begun?

30 A. No, I wasn't there, but I happened to pass there.

Q. When was it finished?

A. I couldn't say.

Q. Were you ever there while the work was in progress?

A. Yes. We used to pass there.

Q. When?

A. At different times; not in the building, but on the street.

Q. When was the first time after October 15 that you saw the work under way?

A. Almost every week.

Q. You and your husband went by?

A. Yes.

Q. Why did you do that?

A. To see how things were progressing.

Q. You went by for that purpose. Did you go in 10 the building?

A. No, we couldn't get in the building.

Q. Did you ever go in the building?

A. No.

Q. Did you and your husband pass this building during its progress because of your interest in it?

A. Yes.

Q. That was it?

A. Yes.

Q. How far had the work progressed on this day 20 in February when you say Mr. Naame complained because he didn't have money to build a garage?

A. I couldn't say when, but there was quite a bit of framework—the outside. There was maybe a story and a half.

Q. Did they have the walls up?

A. I couldn't say.

Q. You don't remember?

A. I don't know.

Q. Were they up on Arctic Avenue? 30

A. I couldn't say that.

Q. Were you present on February 18, 1927, when the wall nearest to Arctic Avenue was up, part of it?

A. I couldn't say.

Q. You don't know that?

A. No.

Q. You and your husband talked this matter over?

A. Yes, sure.

Q. When did you first talk about it?

A. Before it was ——— When the thing was pending, all along.

Q. I mean did you talk about this suit?

A. Which suit?

Q. This suit we are now trying. This law suit?

10 A. When I was in the office that day I heard about it.

Q. That was the first?

A. From my husband.

Q. When was that?

A. February 28th.

Q. 1927?

A. Yes.

Q. You heard about this law suit then?

A. No, not about this law suit.

20 Q. When did you first hear about this law suit?

A. Right along when Mr. Naame was suing him.

Q. When was that?

A. I can't remember the dates. You don't mark down things like that.

Q. When did you and your husband first talk about a meeting in February after suit was brought?

A. He comes and tells me everything.

Q. He tells you everything about what?

A. About business.

30 Q. When did you and your husband first talk about a meeting that was had in your husband's office February 18, 1927, when Mr. Naame was there, and after you knew this suit had been brought?

A. I don't quite understand.

Q. (Last question read to witness.)

A. February 18th there wasn't anything about this.

Q. When was the first time after that that you and your husband talked about this meeting of February 18, 1927?

Mr. Coulomb: She wasn't there.

Mr. Cole: What is the date?

A. February 28th.

Q. If the date is wrong, when was the first time 10
you talked about it?

A. After Mr. Naame left, and right along.

Q. I mean after suit was brought?

A. I don't remember when suit was brought.

(Recess to 1.15 o'clock.)

(After recess, 1.15 o'clock.)

20

LOUIS SATINOV, resumed.

By Mr. Coulomb:

Q. This morning, in direct examination, I asked you if you remember being at Mr. Clevenger's office after October 15, in company with Mr. Naame and Mr. Salsburg. I think your answer to that was that you didn't remember or that you hadn't been there. Have you thought that over? 30

A. Yes.

Q. Do you recall whether or not you were in his office?

A. Yes.

Q. What took place there?

A. Certain papers were fixed up, but I don't re-

member what that was. Mr. Clevenger can tell you better than I can.

PAUL SALSBURG, SWORN.

By Mr. Cole:

10 Q. I show you a paper dated January 25, 1927, signed by you, and seems to be a receipt given to Mr. Satinov on January 25, 1927, and ask you whether or not on that occasion you had any conversation with Mr. Satinov about the agreement which we now claim was made by him with the Naame Company, to release part of this land from the operation of the mortgage?

A. Not a word at that time.

20 Q. Were you in Mr. Clevenger's office with Mr. Naame before the execution of the agreement of September 4, 1926?

A. I was.

Q. Do you recall being there more than once before that date?

A. I believe it was on more than one occasion.

Q. On any one or more than one of these occasions, do you recall whether or not there was any talk about an agreement providing for a release of that mortgage?

30 A. There was.

Q. Were you ever in Mr. Clevenger's office after settlement was made October 15, 1926, either with Mr. Naame or when he was not there, when there was a discussion about a release of that lot from the operation of the mortgage?

A. I do not ever remember discussing a release

after settlement, in Mr. Clevenger's office. To answer you fully, I was in Mr. Clevenger's office once or twice after settlement.

Q. Why were you there? What were you doing there?

A. As I recall, it was on the subject matter of the advancement of money by Mrs. Satinov under her \$15,000 mortgage for steel work. In other words, this: Mr. Satinov wanted to get some money by virtue of a \$15,000 mortgage which Mrs. Satinov held and Mr. Satinov wouldn't pay it out unless Mr. Clevenger approved it. It was suggested there that Mr. Naame produce the bills showing how much he had paid on account of steel work he had done and it seems to me that was the purpose of it and that was the discussion. Mr. Clevenger suggested or Mr. Satinov in his presence suggested that Naame get the bills for steel work showing how much he had paid on account of the steel work.

20

Cross-examination.

By Mr. Cole:

Q. I understood you to say this morning that in a conversation with Naame and Satinov after October 15th one of the reasons why you didn't deem it necessary or otherwise to consult Mr. Clevenger, who had represented Mr. Satinov previously, was that you thought that the settlement of October 15th ended Mr. Clevenger's connection in the matter?

30

A. That is not so. Mr. Clevenger subsequent to the settlement was in some matters, others he wasn't. Sometimes if Satinov would have a suggestion he didn't go to Mr. Clevenger. I remember him saying at one time that he didn't want to pay

any more counsel fees. There were a number of things Mr. Satinov said of that kind; but I am wrong as to there being some conferences in Mr. Clevenger's office after the date of settlement.

Q. Will you say that in these conferences this question of change of provisions of the written agreement of September 4, 1926, were not discussed?

A. I don't recall it. I do not recall that discussion.

Q. Taking your memory a little further along, coming down to January, do you remember having any discussion in January, 1927, in Mr. Clevenger's office?

A. About what subject matter?

Q. The same subject matter, the preparation of an agreement for release of part of the mortgaged premises?

A. I do not certainly recall it; not that subject matter.

Q. Would you say positively it did not take place, that you were not there?

A. Certainly not to my recollection.

Q. Just for a moment to refresh your memory. Do you remember Mr. Clevenger reading an agreement or form of agreement which he had prepared, typed from his dictation?

A. I don't remember. That may have happened. I don't remember.

Q. Do you remember a discussion of an agreement before the agreement of September 4, 1926?

A. Very vividly.

Q. That was an agreement prepared tentatively, prepared before the agreement of September 4, and that was not executed?

A. Yes, I remember.

Q. Will you look at Exhibit C2 for identification

and say whether or not that is a copy of the agreement which was discussed?

A. This was the draft of the proposed agreement prepared by Mr. Clevenger for examination by Mr. Naame and myself for corrections that were necessary, changes or modifications, preparatory to executing a final agreement; and all matters contained in this were discussed.

Mr. Cole: I offer this in evidence.

10

Mr. Coulomb: It is objected to.

The Court: I am inclined to admit them both. I will admit it.

By Mr. Coulomb:

Q. Referring to the agreement of September 4, 20 do I understand you correctly that there were some suggestions made to you prior to that time as to a release of mortgage?

A. Yes.

Q. But they were not embodied in this agreement of September 4?

A. Because of changed conditions.

By Mr. Cole:

30

Q. What was the change of conditions?

A. The changed conditions were that Mr. Naame could not build a garage under the building and therefore had to build it on a piece of land that was spoken of as being released. Therefore that eliminated that.

By Mr. Coulomb:

Q. This condition whereby he would have to build this garage on another piece of land was known on September 4, 1926, at the time of signing the agreement?

A. That is correct. Either it was known or there was some thought in that regard, that it couldn't be done. I don't just know what that is.

10

JOSEPH S. NAAME, recalled, in rebuttal.

By Mr. Cole:

Q. Do you know Mr. Satinov?

A. Yes.

20 Q. How long have you known him?

A. Several months before the signing of the agreement.

Q. Were you ever in the office of Mr. Satinov in February 28, 1927, or thereabouts, and talked with him when Mrs. Satinov was present?

A. Never. I have never talked with Mr. Satinov on realty matters or talked about them in the presence of Mrs. Satinov.

30 Q. Mrs. Satinov testified that on one occasion when she was present you called on Mr. Satinov at his office, that you were seeking a release from the operation of this mortgage and stated in substance that you said you had no money with which to build a garage. I ask you whether or not you made such statement on September 28, 1927, when she was present?

A. I made no such statement at any time; and to

make such a statement would be very foolish on my part.

Q. Did you, or not?

A. No, I did not.

Q. Mr. Satinov said that over the telephone on one occasion or more, you told him that you wanted a release on some rearrangement of the financing, because you were not in position financially to build a garage. Did you ever tell him that?

A. Never.

10

Q. Were you present in Mr. Clevenger's office before September 4, 1926, when this agreement was signed, when there was a discussion about releasing?

A. I was.

Q. Were you ever in Mr. Clevenger's office after September 4, 1926, when the question of releases were discussed with him?

A. After September 4?

Q. Yes.

20

A. Never.

Q. Or after the settlement of September 4?

A. Never.

Q. Were you ever in his office after that date?

A. I was there once or twice, I believe.

Q. State your recollection why you were there on these occasions?

A. The last two occasions, or the first or second, once or twice that I was there, always had to do with the mortgage that Mrs. Satinov was given at the time of settlement.

30

Cross-examination.

By Mr. Coulomb:

Q. I understand, then, that on February 28, 1927, the date that Mrs. Satinov testifies you called at Mr. Satinov's office, you were financially able to build this garage.

10 Mr. Cole: He didn't say that.

A. I didn't say that.

Q. You presented these three papers you saw this morning and examined very carefully?

A. I did.

Q. You did it for the purpose of raising more money?

A. None of those propositions there.

20 Q. Didn't you do it for the purpose of raising more money?

A. It is hard to answer the question. Do you mean money to build with?

Q. Raising it for anything you wanted. You wanted more money?

A. I would like to get—to know whether it was before or after construction?

Q. After February 28, 1927?

30 A. I didn't then. Those propositions wouldn't give me any money for building purposes; that would only come to me after completion.

Q. You made three propositions in Exhibits D4, 5 and 6?

A. I did.

Q. For the purpose of financing your proposition?

A. Yes.

Q. On those three occasions?

A. Yes.

Q. None of them were acceptable to Mr. Satinov?

A. That I don't know.

Q. He didn't accept them, anyway?

A. I can't answer that question, for the simple reason —

Q. You never got them back, signed?

A. Any one of those propositions would have gone through if I could have made my proposition with the finance company. It could have gone through 10 whether he did or didn't accept them. Whether they were correct, I don't know. They were made at his suggestion.

Q. Did he dictate them?

A. He helped me.

Q. Where?

A. I called them across the telephone.

Q. Where did he help you dictate them?

A. I called him from my office to his office.

Q. You never came to his office with anyone of 20 these propositions?

A. Yes.

Q. Did you come to his office?

A. After I talked with Satinov as to what he wanted.

Q. You didn't suggest any of these propositions? You had all the money you wanted?

A. I only made suggestions as they rose to my mind. I had a proposition to raise \$50,000 on mortgage. I asked him if he would consider the \$50,000 30 proposition and he said, "Put it on paper."

Q. This agreement you made with Satinov, according to that, would give you 52 feet adjoining this apartment house, unencumbered by any mortgage?

A. That is true.

Q. You proposed to raise money by mortgage on that piece of ground?

A. Yes.

Q. You testified this morning you could get \$150,000 on that property?

A. I didn't testify anything of the kind.

Q. What did you testify?

A. I testified the apartment house change would cost \$150,000.

10 Q. Didn't you arrange to borrow on the vacant lot of land and didn't you say the money was there in the title company to the amount of \$150,000?

A. I made no such statement.

Q. Then you didn't have the money borrowed?

A. I did, but not in that amount.

Q. What amount did you have?

A. \$25,000.

Q. Would that have been enough to finance the building as you needed it?

20 A. It would have been enough to finance me as I was building it.

Q. You couldn't have financed it with this 52 feet if any of these propositions had gone through?

A. I couldn't say I could have.

Q. You couldn't have financed them yourself if any one of these propositions had gone through?

A. Just the same —

Q. I say, could you have financed it in that way?

A. No.

30 Mr. Cole: We rest.

The Court: I will change my ruling as to the admission of DX7.

WILLIAM M. CLEVINGER, already sworn.

By Mr. Coulomb:

Q. You were going to get the date on which you dictated Exhibit D7?

A. January 13, 1927.

Q. Mr. Naame has declared positively that he was not in your office in connection with any discussion concerning any change in the mortgage situation after September 4, 1926. Do you know whether or not he was in your office at the time these papers were prepared or in the course of preparation? 10

A. He was in my office after these papers were prepared.

Q. Did he take part in the preparation of them?

A. Not in the preparation of them, but in the correction of them.

Q. That was January 13, 1927? 20

A. That was after January 13, 1927.

Q. Do you know whether or not Mr. Salsburg was there?

A. Mr. Salsburg was there, I was there—the four of us.

Q. You were all concerned in the discussion of this proposed new release agreement?

A. We were concerned in the discussion of the agreement which I had written, DX7, which was what Mr. Satinov was willing to do. Then it was proposed that a release of mortgage be given when the second-story brickwork was completed, and that Mr. Satinov refused to do and had always refused to do. 30

Q. There was some proposed change made, as I understand, in the original agreement?

A. Yes. And the agreement I prepared was car-

bon copied, marked, in which the Lincoln Hotel Apartment House Company was purchaser.

Q. That was marked as C2?

A. Yes. That agreement called for a fireproof apartment house on a part of the land, but when it came to give it consideration they found they wanted to go on with the transaction with the Naame Company and not with the Lincoln Apartment House Company and they didn't want to build this
10 fireproof apartment house, they wanted to make it a semi-fireproof apartment house and garage on the site, and that is the way the agreement of September 4th, 1926, was drafted and executed.

Cross-examination.

Mr. Cole: Let me see Exhibit D7?

20 By Mr. Cole:

Q. Who first saw you and gave instructions touching the preparation of the paper which has now been admitted as D7?

A. Mr. Satinov gave me the instructions for the preparation of the paper. Mr. Naame was there before him, asking about the matter.

30 Q. This begins by saying: "WHEREAS Bessie Satinov, on September 4, 1926, entered into an agreement with the J. S. Naame Company, to loan it the sum of \$15,000 second mortgage on a semi-fireproof two-story garage and five-story apartment house ——" Did you know of the existence of that agreement when you put the "Whereas" in?

A. Yes, I drew it.

Mr. Cole: Then your answer is "Yes."

Q. I observe among the "Whereases": "Whereas the Joseph S. Naame Company is going to build and erect a five-story apartment house containing at least 100 one and two-family apartments, thus leaving about fifty feet in front of vacant land," &c. How did you come to put that "Whereas" in?

A. Because that is as I understood the situation at the time I drafted the agreement.

Q. From whom did you get the information?

A. I suppose I had that information from all 10 three of the parties, from Naame, Salsburg and Satinov.

Q. This you say was in January, 1927?

A. January of 1927, the 13th.

Q. I notice there is interlined in pen and ink, the major part of the writing being typewritten, over the word "one hundred," in the paragraph I have just read, the word "seventy." In whose handwriting is that?

A. That is my handwriting. 20

Q. When did that happen to be put in this paper?

A. That was put there either after — I will say that that was put there when the conference was had; because all notes on the paper were as a result of the conference.

Q. The January conference?

A. The conference that came in January 13, 1927. I am safe in saying at that conference, because it was in the conference and we all acted upon it.

Q. Who gave you the information about the 172 30 rather than the 100 apartments, and what was said?

A. I couldn't tell you who gave it to me or what was told, but I can say that it was as a result of the conversations with all of them.

Q. Was this intended to be an agreement between Bessie Satinov and Naame?

A. Let me see that just a moment. It doesn't say.

Q. Is there anything in that writing that the present Satinov Corporation is a party or a proposed party to?

A. No, not in this particular paper.

Mr. Cole: I think that is all.

Mr. Coulomb: That is all.

10

BOTH SIDES CLOSE.

ARGUMENT.

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30

Atlantic City, N. J., June 7, 1928.

Trial of the cause resumed at 10 o'clock A. M.

THOMAS M. GRAHAM, SWORN.

Direct examination. 10

By Mr. Cole:

Q. What is your business?

A. Bricklaying contractor.

Q. Did you do the work on the Naame Building?

A. Yes, sir.

Q. The brickwork?

A. Yes, sir.

Q. Do you know Mr. Satinov? 20

A. Yes, sir.

Q. Did you meet him during the progress of that work?

A. Yes, sir.

Q. Did he send for you at one time to come to his office?

A. Yes, sir.

Q. Where was his office?

A. In the Guarantee Trust Company on the third floor.

Q. Did you go? 30

A. Yes, sir.

Q. Anyone go with you?

A. Yes, sir.

Q. Who?

A. Mr. Dwyer, the bookkeeper.

Q. Now, tell us what took place between you and

Mr. Satinov — By the way, about when was that, as nearly as you can fix it?

A. I don't know the time, Judge. Harris's building was going on.

Q. Tell the Court what took place between you and Mr. Satinov. By the way, how did you come to go there?

A. Why, Mr. Satinov sent for me.

Q. Now, tell what happened.

10 A. All in detail just what really happened?

Q. All that you can really recall that happened at that meeting, what was said by you and what was said by Mr. Satinov.

A. Mr. Satinov sent for me in regards to the building and how we were—how it was going to be financed, and he told me that, how we should do the building, and how I should get my money and how I was going to be paid, and told me that on the wind-up that he had it all financed, and that the money
20 would come through after we reached the roof, and I wanted to know how could we get the money when we reached the roof without completing the building, and he said, "Well, I have got that all fixed," he said, "just as soon as you reach the roof we all get our money." Then at that time I says to him, I says, "Will there be enough money to see this thing through?" And he says, "Yes, enough for all of us," he says, and he says—well, I says, "What about"—he says, "There will be enough money for
30 all of us," and he says, "and then besides what doesn't come out on this thing we will get it, Joe can have it on the lot next door."

Q. What?

A. Joe could get it on the lot next door, and I says, "Why, is Joe"—"You are not in on that lot, too, are you?" And he says, "No." He says, "Joe gets that." He says, "I finance, I put back a mort-

gage on the building and release that lot, that is the way I get it.”

Cross-examination.

By Mr. Coulomb:

Q. When did you finish your work on the Lincoln Apartments, Mr. Graham?

A. I couldn't tell you actually the time, Mr. 10
Coulomb, couldn't exactly tell you the time I finished it.

Q. Has it been a year ago?

A. Oh, I guess about a year ago this time.

Q. How much was the total amount of your bill on that work?

A. Why, anywheres between—around sixty thousand dollars.

Q. How much does Mr. Naame owe you now?

A. Mr. Naame?

20

Q. Yes.

A. Around forty thousand dollars.

Q. Where was this conversation that you have just spoken about?

A. In the Guarantee Trust Company.

Q. And when?

A. I couldn't tell you the date.

Q. After you had started on the work or before?

A. I have had several conversations with Mr. Satinov.

30

Q. I am speaking about the one that you have just talked about, when was that?

A. I guess we were started.

Q. How is that?

A. We have had several conversations with him.

Q. I understand, but you have testified just a few minutes ago to a conversation with Mr. Satinov in

his office. Now, I want to know when that conversation was had?

A. When the building was going on.

Q. After you had started in to work?

A. About, yes, sir.

Q. And after you had gotten your contract with Mr. Naame to do the brickwork?

A. Yes, sir.

10 Q. How did he send for you? How did Mr. Satinov send for you, by telephone or by letter?

A. By phone, I think.

Q. To you?

A. To me?

Q. Well —

A. I guess to me, yes.

Q. And you went over there?

A. To my office and then to me.

Q. Mr. Naame was the owner of this building, wasn't he?

20 A. He was, and that is what made it — I didn't know how Mr. Satinov was getting into this thing.

Q. You thought it was rather strange he should talk to you, did you, about the way you should do the work on that building?

A. Guaranteeing my money.

Q. Did you ever get any money through Mr. Satinov?

A. Yes.

Q. How much?

30 A. That I couldn't tell you.

Q. I show you two checks, one for \$2500 made payable to the order of Joseph Naame and endorsed by him to you and ask you whether you received that check and got the money on it?

A. I guess I did. I don't remember it. That isn't my signature. That is my bookkeeper's signature.

Q. Well, you don't deny you got the \$2500, do you?

A. As long as he signed it, I guess it is all right.

(Check marked D1 for identification.)

Q. I show you another one, check for \$7500 drawn to the order of Mr. Naame and endorsed by you, did you receive that money?

A. Could I go back over my testimony on this 10 stuff?

Q. I am asking you did you get this \$7500?

A. I guess I did. My bookkeeper is the one that received it.

Q. You don't know whether you got \$7500 from Mr. Satinov or not, is that what you want us to understand?

A. I tell you we got money, I don't know how much.

Q. Is your endorsement on that check? 20

A. My endorsement is not on it; my bookkeeper's endorsement is on it.

Q. What did he do with the money after he got it?

A. Yes, that is our endorsement, the stamp, I didn't see that.

Q. So you got \$10,000; do you know where these checks were handed over in his office?

A. That I don't know; I didn't get it.

(Check marked D2 for identification.) 30

(Checks formerly marked D1 and D2 for identification, offered, received in evidence, and marked Exhibits D1 and D2.)

FRANK R. DWYER, SWORN.

Direct examination.

By Mr. Cole:

Q. Are you employed by Mr. Graham?

10 A. Yes, sir.

Q. What is your position?

A. Bookkeeper.

Q. How long have you been bookkeeper?

A. About approximately seven or eight years with him.

Q. Now, two checks have been furnished by Bessie Satinov, to the order of Joseph S. Naame Company, and endorsed, one to Thomas Graham or order, Joseph Naame, and then in typewriting, "For deposit only to the credit of Thomas Graham," do
20 you remember that check?

A. Yes, sir.

Q. No doubt about Graham having received that, is there?

A. No.

Q. Credited on this job?

A. Yes, sir.

Q. And the other one is marked "Joseph S. Naame Company, for deposit only to the credit of Thomas Graham," whose writing is that?

30 A. It is my writing.

Q. And Graham got that?

A. Yes, sir.

Q. Do you happen to remember how those checks got to you?

A. I went to Mr. Satinov's office for them.

Q. Now, did you on one occasion go to Mr. Sat-

inov's office with Mr. Graham while this work was on?

A. Yes.

Q. How did you come to go there?

A. Why, Mr. Satinov called up on the telephone and asked for Mr. Graham.

Q. Now, do you know—did you answer the phone yourself?

A. Yes, sir.

Q. As a result of that phone call from Mr. Sat- 10
inov, did you and Mr. Graham go to Mr. Satinov's
office?

A. Yes, sir.

Q. Where?

A. In the Guarantee Trust Building.

Q. Do you recall about when that was as nearly
as you can tell us?

A. I don't know, it was about around the be-
ginning of the job.

Q. You are speaking now of the Naame job that 20
is in question here?

A. Yes, sir.

Q. Now, then, tell us all that you presently recall
took place when you got to Mr. Satinov's office.

A. When we got to Mr. Satinov's office, Mr. Gra-
ham started to go in the office and Mr. Satinov
talked to Mr. Graham asking how I was there, and
Mr. Graham told him that I was his bookkeeper, and
he says all right, he says, "Come in," and I sat
there and the conversation was between Mr. Satinov 30
and Mr. Graham, and from what I learned and
heard —

Q. Now, tell us in your own words as nearly as
you can what they said.

A. Mr. Satinov told Mr. Graham that he was con-
nected in this job from the point of finances and
that he wouldn't have to worry about his money,

that the money would be all right on the job, and we asked him how we would get the balance of our money, and he says, "Well, when you reach the roof," he says, "I am going to release the lot so Naame can get more money to finance the job." That is all the conversation that I paid any attention to.

Q. Up to that time.

10 Cross-examination.

By Mr. Coulomb:

Q. At the time of the conversation which you have just spoken of, had these checks been paid to you or to Mr. Graham?

A. Those checks were paid to me and they went to the credit of the job on Mr. Graham's account.

20 Q. Were those checks given to you before or after the conversation that you have just spoken about?

A. Those checks were given to me at different times.

Q. Were they given before or after?

A. They were given during the construction of the building.

Q. Were they given before or after the conversation?

A. After.

30 Q. Now, why did you hesitate so long?

A. For no reason or other.

Q. Why did you only listen to the part of the conversation that Mr. Satinov had with respect to the release of the lot?

A. Because the business was carried on between Mr. Graham and Mr. Satinov, not between Mr. Graham and I.

Q. That is the only part of the conversation that you heard?

A. Yes, I paid any attention to.

Q. Why did you pay particular attention to that?

A. Why, because I was as much interested in getting the money as Mr. Graham was.

Q. Well, did you know that is what you were going there, to discuss this release of the mortgage?

A. I went there to find out for my own information in case Mr. Graham would be away and I would know how to handle things. 10

Q. As a matter of fact you went there with Mr. Graham, because you and Mr. Graham wanted to know how the thing was going to be financed, didn't you?

A. We wanted to know how we were going to get our money.

Q. Had you asked Mr. Satinov over the telephone how you were going to get more money? 20

A. No, sir.

Q. Did you know that is what you were going there for when you went there?

A. No, sir.

Q. Why did you go with Mr. Graham, then, if you didn't know what the meeting was going to be about?

A. I usually do go with Mr. Graham in things of this sort.

Q. Do you have many things of this sort?

A. Yes, sir, quite often. 30

Q. When people say they are going to release lots?

A. Not along that line, but where business is concerned.

Q. You always go with Mr. Graham to see whether he is going to get his money; is that it?

A. Not always, but sometimes.

Q. When was this conversation that you had with Mr. Satinov?

A. I don't recall the time.

Q. Coming back to the two checks, as a matter of fact, you got those in Mr. Clevenger's office, didn't you?

A. No, sir.

Q. Are you sure about that?

A. Yes, sir.

10 Q. Positive, eh?

A. Yes, sir.

Q. You are not quite so positive about the other things, are you?

A. I don't know.

Q. Did you take this order to Mr. Satinov?

A. No, sir, those orders were in Mr. Satinov's office when I got there.

Q. Did he tell you to come and get the money on those two orders?

20 A. He told me he had checks for them, and I had to sign for them.

Q. Whose signature is that at the bottom?

A. This here signature is my signature.

Q. Did you sign that at the time you got the money?

A. Yes, sir.

Q. That is the second signature on the sheet, isn't it, on the back of the sheet?

A. It is my first signature on the sheet.

30 Q. I show you the other one and I ask you whose signature that is on the bottom of the sheet?

A. That is my signature.

Q. They are the two receipts on the back of the two sheets on the front of which is Mr. Naame's stationery?

A. Yes, sir.

JOSEPH S. NAAME, SWORN.

Direct examination.

By Mr. Cole:

Q. Mr. Naame, when this case was heard before Vice-Chancellor Ingersoll, did you know of the testimony that has been given Mr. Graham and Mr. Dwyer? 10

A. I did not.

Q. When did you first hear of it?

A. Several days after the trial on April the 12th.

Q. And without giving the detailed information unless the other side care for it, from whom did you get the information?

A. Mr. Clowley, the credit man of the Atlantic City National Bank.

Q. When you got that information did you communicate it to your counsel? 20

A. I did.

Q. How soon after you got it?

A. The following day, I saw Mr. Clowley six o'clock in the evening, and I communicated with you the following day.

(No cross-examination.)

JOHN W. CONWAY, SWORN.

Direct examination.

By Mr. Coulomb:

Q. Mr. Conway, you are the Building Superintendent of Atlantic City?

10 A. Yes, sir.

Q. And have charge of the issuance of permits for buildings?

A. Yes.

Q. Did you issue a permit to Mr. Naame or the Naame Company for the construction of the Lincoln Apartment on North Indiana Avenue?

A. Yes, sir.

Q. Have you that permit with you?

20 (Permit produced.)

Q. Will you produce it, please?

(Permit produced.)

Q. Are these permits kept in a book such as you have there?

A. Yes, sir; this is a copy of it.

Q. When was the permit issued?

30 A. Eleventh month, 10th, 1926.

Q. That would be November 10, 1926, would it not?

A. Right.

Q. To whom was it issued?

A. Joseph Naame.

Q. And for what purpose or for what sort of a building?

A. Apartment house.

Q. Is there anything said about the cost of it?

A. Yes, sir; \$125,000.

Q. Has the cost of the building any connection at all with the amount of fee which should be paid to your department?

A. Yes, sir.

Q. What is the fee or how is that fee regulated?

A. Two dollars a thousand for the first ten, and and a dollar and a half for the next and a dollar 10 there on.

Q. Then, as I understand it—was any further permit issued to Mr. Naame for any other work or additional work on the building?

A. No.

Q. That is the only one?

A. Yes, sir.

Q. Is that one for the cost of the building, proposed cost of the building?

A. Yes, sir.

20

Q. Is it in the shape of an affidavit or just a certificate?

A. Just a certificate, that is all, not in the shape of an affidavit.

Q. Is it necessary before a permit is issued that the person asking for it should name the cost of the work that is to be done under the permit?

A. Yes, sir.

Q. And that was done in this instance?

A. Yes, sir.

30

Q. I show you a roll of plans and ask you what they are.

A. They are the plans.

Q. They are the plans which accompanied the permit to Mr. Naame?

A. Yes, sir.

Mr. Coulomb: If your Honor please, a copy of the permit I think we have among the exhibits.

The Court: Yes, we have a copy of the plans or part of them.

Cross-examination.

By Mr. Cole:

10

Q. Let me see that permit, please. Have you seen this building since its completion?

A. Yes, sir.

Q. Are you a mechanic yourself?

A. Yes, sir.

Q. What, carpenter or brick layer?

A. Brick layer.

Q. Did you see it in the course of construction?

A. Yes, sir.

20 Q. Could that building be built for \$125,000?

Mr. Coulomb: That is objected to, being immaterial and irrelevant.

The Court: I will permit it.

A. Could it be built?

Q. Yes.

A. Well, now, that is a bad question to ask me,

30 Judge.

Q. You really don't know?

A. It could be and it couldn't be.

Q. Well, I am talking about the building that you found there, could it have been built for \$125,000?

A. I don't want to answer that question.

Q. There is a million cubic feet, I am told, in the building.

- A. What is that?
- Q. I am told there is a million cubic feet in the building?
- A. Well, you can figure it up. I guess the building could be built for about—well, I wouldn't want to answer that, either.
- Q. How high is this building?
- A. Six-story, I think.
- Q. Do you know how many apartments there are there? 10
- A. I think there is 166 rooms.
- Q. This was built in 1926 ———
- A. 1926, the permit is.
- Q. 1927? That is all.
-

LOUIS SATINOV, sworn.

Direct examination. 20

By Mr. Coulomb:

- Q. Mr. Satinov, do you know Mr. Graham?
- A. Yes, sir, I do.
- Q. The bricklayer contractor who was just on the stand?
- A. Yes.
- Q. Do you know his bookkeeper?
- A. I do; yes, sir. 30
- Q. Did you ever telephone or write to either one or both of them to come to your office?
- A. No, sir.
- Q. Were they ever in your office?
- A. Yes, sir.
- Q. For what purpose?
- A. Why, Mr. Graham came up one day, I believe

it was in the latter part of 1926, Mr. Satinov, he says —

Q. Wait just a minute. Was it before or after the building was started?

A. Before everything was started.

Mr. Cole: You say before anything was started?

- 10 A. Yes, sir. "Mr. Satinov," he says, "I am figuring now for Joe Naame on the plans for one building which probably amount to fifty, or fifty-five or sixty, I don't remember exactly the sum, and I am going to figure for another building, garage next door, I believe it is, as soon as Naame has the plans ready, and they will amount to twenty or twenty-five thousand dollars, and I understand," then he told me, "That you are to give me my money as I go along." I said, "He told you wrong.
- 20 All the money I know you will get, not you exactly, anybody who works on the building, his arrangement with Mrs. Satinov for mortgage \$15,000, it is up to Naame to say who this money goes to." "Well," he says, "I understand that you have got the building mortgaged up, that is, the lot mortgaged up for all it is worth, and I want to know where my money comes from for this job, and unless I know where it comes from I don't want the job, I wouldn't take it." I says, "That is up to you, Mr. Graham. I
- 30 have got nothing to do with the job." A couple of weeks later he came in again by himself, now he says, "Satinov, I got fixed up with Naame all right, I am going to do the work, Naame is going to give me \$10,000 from the proceeds of Mrs. Satinov's fifteen thousand, and is to get the notes as I go along with the job every week," and would I discount notes for him, because his limit at the Atlantic City

National Bank was clean up, his credit, so I told him I can't discount any notes for him at all, and that was the end of it.

Q. Now, did you ever tell either Mr. Graham or his bookkeeper at any time —

A. At no time.

Q. Just a minute—at any time that you were going to release a part of the lot so that Mr. Naame could make a first mortgage on it?

A. Mr. Graham knows there is two buildings up, 10 up there.

Q. I asked you if you ever told him that?

A. No, sir; never asked me that.

Q. Did he ever ask you whether you were going to do any such thing or not?

A. No, sir, some time later his bookkeeper came in from Mr. Naame, with an order for \$2500, so I sent him to Mr. Clevenger's office, and Mr. Clevenger gave him a check for it, later \$7500 again, and \$5,000 went to the iron man. 20

Q. How much was the mortgage out of which those funds were paid?

A. \$15,000.

Q. I show you a check dated February 4, 1927, to the order of Naame for \$2500, and ask you whether that check represents the amount of money that came out of Mrs. Satinov's mortgage?

A. Yes, sir.

Q. Where was it paid?

A. At Mr. Clevenger's office. Here is Clevenger's letters and everything, and Mr. Clevenger's receipts. 30

Q. I show you a receipt.

A. Mr. Clevenger told Mr. Naame to write an order and sent it and I went up to Mr. Clevenger's office, and I went with him.

Q. Who went with him?

A. I went with him.

Q. With who?

A. With the bookkeeper and Mr. Naame to Mr. Clevenger's office, Mr. Clevenger made out this receipt on the back, made him sign both of them.

Q. Both in Mr. Clevenger's handwriting, the two receipts on the back?

A. Yes, sir, Mr. Naame endorsed and the bookkeeper endorsed it.

10 Q. I show you another check for \$7500 and ask you whether that check was paid out of the funds derived from Mr. Satinov's mortgage?

A. Yes, sir.

Q. When was it paid?

A. On February the 18th, I believe the receipt here, Mr. Clevenger wrote it out, Mr. Clevenger's writing, February the 18th, I was there present, Mr. Clevenger's office.

Q. Where was that money paid?

20 A. Mr. Clevenger's office. I would have him up here in a minute.

Q. Who wrote the receipt on the back of the receipt?

A. Mr. Clevenger, it is his writing, and here is five thousand dollars.

Q. That is paid to whom?

A. To the iron man.

Q. When was that paid?

A. January 17th.

30 Q. Was that out of Mrs. Satinov's mortgage funds?

A. Yes, sir.

Q. Who endorsed the receipts on the back?

A. Mr. Naame and iron man, both, Mr. Simpson.

Q. Who wrote it?

A. Mr. Clevenger, Mr. Clevenger told me to save those receipts, put them in the safe.

Q. Did Mr. Graham and his bookkeeper ever come to your office together?

A. Not together, sir, no, sir. Mr. Naame and the bookkeeper were together, yes, sir.

Cross-examination.

By Mr. Cole:

Q. What mortgage were you and Mr. Graham 10 talking about?

A. About, he asked me first about my mortgage, he said that, "I understand you have got the lot mortgaged up all it is worth." I told him I took a purchase money mortgage for the full amount, I sold it to Mr. Naame \$185,000, and the \$15,000, then he ask me where he is going to get the money to put the job over, I says, "Well, the only money I know of is \$15,000, Naame has arranged with Mrs. Satinov 20 to pay as the work progresses, and it is up to Naame to say who this money goes to, whether the brick-layer or iron man."

Q. This was before the work was begun?

A. Yes, sir.

Q. Before Mr. Graham made his contract with Mr. Naame?

A. He was figuring on the job, I don't know whether the contract or not, he told me he was figuring on the job.

Q. And the only money that was available, was 30 in sight at that time, was the \$15,000 that Mrs. Satinov had a mortgage for?

A. That is the money that Naame made arrangement with Mrs. Satinov.

Q. That is the only money in sight?

A. I didn't know any other money.

Q. You didn't know of any other money, did you?

A. No, sir, except Naame told me the reason he didn't give me the money on the lot, he got to use the money for the building.

Q. And Mr. Graham was there wanting to know how he was going to get his money, didn't he?

A. How Naame is going—yes, sir.

Q. You told him you didn't know how he was going to get it?

A. Except the \$15,000, yes, I told him. I beg
10 pardon, I did tell him.

Q. Do you know what Mr. Graham's contract was to be?

A. He told me fifty or sixty thousand dollars. By the way, I did tell him, your Honor, Judge, I just recollect I did tell him what Naame told me, that after the building is completed he is going to get a big second mortgage to pay all.

Q. Going to get a second mortgage?

A. Yes, or if he didn't, he is going to issue a
20 bond issue and pay up even my mortgage, but I forgot to mention that before.

Q. You never mentioned anything about releasing your mortgage, never was talked about at all?

A. No, sir.

Q. Either by you or Mr. Graham?

A. No, sir. Judge, how could I talk about releasing that? He is putting up the building. Mr. Graham asked me that. There wasn't any talking of releasing.

30 Q. And he and his bookkeeper were never there together in your office?

A. Beg pardon?

Q. He and his bookkeeper were not there together?

A. No, Mr. Naame and his bookkeeper.

Q. And you didn't telephone him to come there?

A. No, sir.

Atlantic City, N. J., June 26, 1928.

(Trial of the cause resumed at 10 o'clock A. M.)

(Appearances as before noted except John D. McMullin, Esq., for defendant.)

WILLIAM M. CLEVINGER, recalled.

10

Direct examination.

By Mr. McMullin:

Q. Mr. Clevenger, you are an attorney at law of this State and counsellor?

A. Yes, sir.

Q. I hand you an agreement to purchase by the defendant, dated September 4, 1926, made between Louis Satinov Real Estate and Mortgage Corporation and Joseph S. Naame Company; did you draw that agreement?

A. I did.

Q. What is the date of it?

A. September 4, 1926.

(Exhibit marked C1 for identification of this date.)

30

Q. Subsequent to that time did you draw the bond and mortgage referred to in the agreement?

A. I did.

Q. I hand you mortgage dated October 15, 1926, made by Joseph S. Naame Company to Louis Satinov Real Estate and Mortgage Corporation, and

bond of the same date from the same parties. Did you draw those papers?

A. I did.

(Bond and mortgage marked C2 and C3 for identification of this date.)

10 Q. After drawing the agreement of September 4, 1926, what was the next thing you did in connection with this matter?

A. Sent the bond and mortgage to the Chelsea Title and Guarantee Company for approval.

Q. When did you send them to the Title Company, do you know?

A. October 9, 1926.

Q. And then what was the next connection you had with it?

20 A. They were returned to me by the Chelsea Title & Guarantee Company, duly approved in a letter dated October 13, 1926, which I received October 14, 1926.

Q. Then what did you do?

A. Took them down to Mr. Salsburg.

Q. Paul M. Salsburg?

A. Yes.

Q. An attorney?

A. Yes.

Q. Why did you take them to him?

A. Because he represented Mr. Naame.

30 Q. When did you hear from him again?

A. My best recollection is the morning of October 15, 1926, before we made the settlement with the Chelsea Title & Guarantee Company.

Q. What happened at that time?

A. He called my attention to the fact that the bond and mortgage as drafted did not contain a clause extending the time for paying the first in-

stalment of the interest in accordance with the terms of the agreement.

Q. Who called your attention to that, Mr. Salsburg?

A. Mr. Salsburg.

Q. Was that a fact?

A. It was a fact, yes.

Q. Then what, if anything, did you do?

A. Amended the mortgage by inserting the last clause as appears on the second page. 10

Q. Will you read the clause?

A. "The parties hereto stipulate and agree that the instalment of interest due under the terms of this mortgage on April 15th, 1927, be and the same is hereby extended until October 15, 1927."

Q. Did you make any change in the bond?

A. No.

Q. Why didn't you do that, Mr. Clevenger?

A. Mr. Salsburg and I discussed that and I said I didn't think it was necessary and he acquiesced 20 after some argument.

Q. Did he agree with you as to the correction of the papers as drawn by you?

A. He raised no objection to them other than the one which I have stated.

Q. Did you attend the settlement?

A. I did.

Q. Was the question raised at that time by any one as to this clause?

A. No. 30

Q. Did anyone else other than yourself and Mr. Salsburg discuss this matter with you at any time?

A. No. That is, you are speaking now of the failure to insert the clause under the—no, there was no discussion among others as to what should go in the contract, but in the mortgage itself.

Cross-examination.

By Mr. Cole:

Q. Mr. Clevenger, did you intend that the language in the mortgage inserted after Mr. Salsburg's calling your attention to its omission, to comply with the clause in the agreement touching the matter?

A. My understanding of it, yes.

10 Q. In other words, you tried to incorporate in that mortgage the provision in the agreement of September 4, 1926, marked for identification?

A. As I understand it, yes, sir.

Q. Now, will you read the provision in that agreement touching the matter?

A. In addition to the clause above set forth, the bond and mortgage aforesaid shall provide that the interest for the first year shall be paid at the expiration of the year instead of semi-annually.

20 Q. Did you have this agreement before you when you incorporated that addition in the mortgage?

A. I must have.

Q. Can you recall why you did not use in the mortgage the precise language that was used in the agreement?

30 A. No, other than this, that my construction of the agreement that was between these parties was that the time for paying the first installment of interest was to be extended until the expiration of the first year. That is what I thought I was doing at the time that I put that clause in the mortgage.

Q. In other words, you say that when you put the clause in the mortgage, you were seeking to interpret your own language in the agreement, is that correct?

A. I was inserting in the mortgage what I conceived to be was the intent of that agreement.

Q. In other words, there is no difference between us as to the fact that you wanted to have the mortgage say precisely what the agreement said?

A. Yes, and I understood the agreement to be that the time was to be extended until the expiration of the year.

Q. We will have the Court determine that. I just wanted to be sure I got your line. That is all.

By Mr. McMullin:

10

Q. Mr. Salsburg agreed to this clause that went into the mortgage?

A. He did after we threshed out the point as to whether it was necessary to put it in the bond as well as in the mortgage.

Mr. McMullin: Parties agree that in consideration of this case the bond and mortgage marked for identification shall be considered, and it is admitted that a demand for the payment of principal was made subsequent to October 15, 1927, and that thereafter, on the dates fixed in the pleadings, the tender was made which was refused, and the complainant reserves the right to object to the introduction or use in the case of the agreement marked for identification as Exhibit C1 of this date —

20

Mr. Cole: And which the defendant offers in evidence.

30

Mr. McMullin: —on whatever grounds may be argued in his brief.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between
 10 JOSEPH S. NAAME COM-
 PANY,
 Complainant,
 and
 LOUIS SATANOV REAL ES-
 TATE AND MORTGAGE COR-
 PORATION, a corp.,
 Defendant.

On Bill for Relief and
 Injunction.
 On Final Hearing.
 Conclusions.

20 MESSRS. COLE & COLE, for the complainants.
 MESSRS. BOURGEOIS & COULOMB, for the defendant.

INGERSOLL, V. C.:

30 The complainant files its bill alleging that on the
 blank day of September, 1926, it and defendant com-
 pany entered into an agreement, wherein the de-
 fendant agreed to convey to the complainant a cer-
 tain tract of land therein described, for the sum of
 \$185,000. The complainant agreed to secure the
 payment of said sum by the execution of a bond and
 mortgage in like amount, payable within ten years,
 with the obligation of paying \$5,000 on account on
 the principal at the expiration of each year after
 the first year.

It was further provided that "Within 60 days after having acquired title to the lands and premises, the party of the second part (the complainant) agrees to commence the erection of a semi-fireproof two-story garage and five-story apartment house containing at least one hundred one and two-room apartments and which shall be completed in every detail on or before June 15, 1927.

Further to execute and deliver a bond in the sum of \$200,000, with Joseph S. Naame as surety to guarantee such erection and completion, and as further security to assign a certain policy of insurance upon the life of said Naame, as additional protection for the performance of said agreement." 10

That the complainant complied with the provisions in said agreement by executing and delivering the bond and mortgage referred to therein, and by constructing an apartment house thereon, but, instead of building an apartment house containing one hundred apartments, constructed one containing one hundred seventy-two apartments; but no garage was constructed, as is provided in the agreement, for the reason hereinafter to be stated. 20

That approximately two weeks after the execution and delivery of the bond and mortgage referred to in the agreement, Joseph S. Naame, president of complainant company, approached Louis Satanov, president of the Louis Satanov Real Estate & Mortgage Corporation, defendant herein, and stated to him that the complainant preferred not to build the semi-fireproof two-story garage referred to in the agreement, and in lieu thereof would build an apartment house containing one hundred seventy-two apartments, if said Real Estate & Mortgage Corporation would release complainant from building said garage and would agree to release from the operation of said mortgage a portion of the land 30

described therein, being the lands and premises upon which the garage was to be constructed.

The said Satanov, acting for and on behalf of said Real Estate & Mortgage Corporation, and with authority so to do, agreed with the said Naame, acting for and on behalf of complainant, that if complainant would construct the enlarged apartment house, it would be released from building said garage and said Real Estate & Mortgage Corporation would re-
10 lease the land specifically described herein from the operation, effect and encumbrance of said mortgage.

That demand has been made of the defendant for said release, and that the defendant has refused to do so.

That as a bonus to be paid by complainant to the defendant, and after the execution and delivery of said bond and mortgage, complainant executed ten certain promissory notes payable to the order of Louis Satanov Real Estate & Mortgage Corporation
20 one year after date, two years after date, three years after date, four years after date, five years after date, six years after date, seven years after date, eight years after date, nine years after date and ten years after date, and being in the following sums respectively: \$925, \$925, \$900, \$850, \$825, \$800, \$775, \$750 and \$750. Said notes may be dated on the same day as date of said mortgage, to wit, October 15, 1926, but they were not delivered until after the delivery of said bond and mortgage.

30 That no consideration passed for said notes, but they were intended as a bonus to be paid by complainant to said Real Estate & Mortgage Corporation, for the acceptance by it of said bond and mortgage. The agreement to pay the bonus was made at and before the execution of the written agreement which comprehended all the agreement between complainant and the said Louis Satanov Real Estate &

Mortgage Corporation concerning the transaction in question.

The prayer is, "That it be decreed that the defendant execute and deliver to complainant a properly executed and acknowledged release of the land specifically described in the bill, from the operation, effect and encumbrance of said mortgage, or that it be decreed that it has no lien thereon, by virtue of said mortgage, and that it be restrained and enjoined from transferring, assigning or in any wise disposing of the notes referred to in the bill; and that it be decreed that they be delivered up and surrendered to complainant as lacking a consideration; and that it be restrained and enjoined from assigning, transferring and setting over the bond and mortgage, except upon condition that it inform anyone to whom it may be assigned that it is subject to complainant's right to have the premises specifically described in the bill released from the operation, effect and encumbrance thereon."

The answer is a denial of the allegation of Section 3, and alleges that complainant requested defendant to put in the agreement a release clause, which proposition was refused; and says that Louis Satanov was without authority to make any such agreement, and that there is no agreement in writing, wherein defendant agreed to release said or any lands from the lien of said mortgage.

At the hearing it was stated that the controversy concerning the notes, set forth and claimed to be as a bonus, had been settled.

The only question to be determined is, "Is there an enforceable agreement between the parties hereto, wherein the defendant agreed to release from the effect of said mortgage the lands in question."

The Statute of Frauds and Perjuries, Comp. Stat. p. 2612, Sec. 5, reads:

“That no action shall be brought (4) upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them * * * unless the agreement * * * shall be in writing and signed * * *.”

32 A. L. R. p. 878, gives as Rule III, “Rule that oral release, discharge, or assignment is invalid by reason of the Statute of Frauds” and cites *Irwin v. Johnson*, 36 N. J. Eq. 347, as a case “involving a debt secured by mortgages, that a parol declaration of an intention to release the debt does not operate as an equitable release.”

“Where the purpose is to voluntarily extinguish a mortgage debt, it must be executed by an instrument as solemn as the instrument by which the debt is created.” *Tulane v. Clifton*, 47 N. J. Eq. 351.

Smith on Frauds, page 505, Sec. 362, “The general rule is that a mortgage, whether considered as vesting the fee in the mortgagee, or as vesting in him a security for specified purposes, leaving the fee in the mortgagor, can only be released in writing under the statute of frauds. On its face it purports to convey an interest in lands subject to defeasance.” Citing *Van Keuren v. McLaughlin*, 19 N. J. Eq. 187, and *Clark v. Condit*, 18 N. J. Eq. 358, which held that an equity of redemption was a right or estate in lands, and cannot be released except in writing.

30 A. L. R. 870, is the case annotated, and under which annotation the rule above is quoted, held “That an unexecuted verbal agreement made by a mortgagee for a valuable consideration to release a real estate mortgage does not come within the statute of frauds of that State, because a distinction is made between contracts to sell or convey which are the words used in the act, and the contracts or agreements made

between vendor and vendee, mortgagor and mortgagee, after that relation between them is established, and which are intended to terminate that relation."

Our statute is much broader in its terms. *Supra*.

There can be no doubt that a mortgage is such an interest in land as the statute requires to be in writing.

In *Hartman v. Powell*, 68 N. J. Eq. 293, at page 296, the last Vice-Chancellor Grey said: "The terms of that statute declare that the force and effect of a parol agreement, creating an interest in lands, shall be to pass an estate at will only, whether it be asserted in law or in equity. Courts of equity have, however, in certain special cases, given relief against the operation of that statute, usually for the enforcement of the declared purpose of that act, as a statute to prevent frauds. Bills filed by a party who has performed his side of a parol bargain for the conveyance of lands to compel the other party specifically to perform the parol agreement, and other cases, where the enforcement of the statute will itself operate as a fraud, are within this class. 10 20

In this State the Court of Errors and Appeals has, with respect to this action of the Statute of Frauds, declared that in all cases in which any Court has validated parol contracts passing an interest in land, the contract itself has been required to be proved to the point of demonstration. *Lawrence v. Springer*, 49 N. J. Eq. 297; *Barbour v. Barbour*, 51 N. J. Eq. 267. 30

It is proper, therefore, in this suit, in which the complainant's asserted right is in direct contravention of the statute of frauds, to inquire whether the complainant presents such a case as under these decisions amounts to a demonstration of her equity."

This case does not come within the accepted rule as explained by Vice-Chancellor Leaming in *Polakoff v. Halphen*, 83 N. J. Eq. 126, at page 128, where he said, "An examination of these cases will disclose the accepted rule in this State to be that when the agreement or license, whether founded in parol or in writing, is clearly established and includes either express or implied authorization by the licensor for the licensee to occupy the land of the licensee, and the license has been executed by possession in such manner that its revocation would be operative as a fraud upon the licensee, a court of equity will protect the licensee such rights as the licensor expressly or impliedly conferred. This is indeed no more than an equitable application of the essential principles of estoppel as applied in *Short v. Taylor* and approved in *Lawrence v. Springer*, *supra*."

20 The bill will be dismissed.

30

FINAL DECREE.
IN CHANCERY OF NEW JERSEY.

Between
 JOSEPH S. NAAME COM-
 PANY, a corporation,
 etc.,
Complainant,
 and
 LOUIS SATANOV REAL ES-
 TATE AND MORTGAGE COR-
 PORATION, a corp.,
Defendant.

10

On Bill, etc.
Final Decree.

This matter coming on to be heard in the pres- 20
 ence of Cole & Cole, Esquires, solicitors for com-
 plainant, and Bourgeois & Coulomb, solicitors for
 defendant; and the Court having read the pleadings
 and heard and considered the evidence therein, and
 being of the opinion that the complainant is not en-
 titled to the relief prayed for in its bill.

It is, on this 4th day of December, A. D. 1928, on
 motion of Bourgeois & Coulomb, Esquires, solicitors
 for defendant, ordered, that the bill of complaint in
 this cause be, and the same is, hereby dismissed 30
 with costs.

It is further ordered, that there shall be included
 in said costs a counsel fee of \$150, to be paid to de-
 fendant's solicitors.

Respectfully advised,

R. H. INGERSOLL,
 V. C.

NOTICE OF APPEAL.

(Filed Dec. 10, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

JOSEPH S. NAAME COM-
PANY, a corp., &c.,*Complainant,*

and

LOUIS SATANOV REAL ES-
TATE & MORTGAGE COR-
PORATION, a corp., &c.,*Defendant.*On Bill, &c.
Notice of Appeal.

20

The complainant, Joseph S. Naame Company, a corporation of the State of New Jersey, hereby appeals from the final decree made in the above-entitled cause on the 4th day of December, nineteen hundred and twenty-eight, by the Chancellor on the advice of Hon. Robert H. Ingersoll, Vice-Chancellor, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated December 6, 1928.

COLE & COLE,

Solicitors for Complainant.

PAUL M. SALSBURG,

Of Counsel.

30

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

PAUL M. SALSBURG,
Of Counsel with Complainants.

A true copy.

THOMAS BARBER,
Clerk.

10

[ENDORSED]

Service acknowledged this 7th day of
Dec., 1928.

Bourgeois & Coulomb,
Solicitors for Defendant.

20

30

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10 Between

JOSEPH S. NAAME COM-
PANY, a corp., &c.,*Complainant-
Appellant,*

and

LOUIS SATANOV REAL ES-
TATE & MORTGAGE COR-
PORATION, a corp., &c.,*Defendant-
Respondent.*On Appeal from
Chancery.

Petition of Appeal.

20

*To the Honorable the Court of Errors and Appeals
in the Last Resort in All Causes:*

The petition of Joseph S. Naame Company, a corporation of the State of New Jersey, the appellant in the above-entitled cause, respectfully shows that:

30

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, on the advice of Hon. Robert H. Ingersoll, Vice-Chancellor, bearing date the 4th day of December, nineteen hundred and twenty-eight, in a certain cause in said Court of Chancery wherein the said Joseph S. Naame Company, a corp.,

&c., was complainant, and the said Louis Satanov Real Estate & Mortgage Corporation, a corp., &c., was defendant, in this respect, to wit, that the said decree denies complainant the relief prayed for in its bill and dismisses its bill.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it should have granted complainant the relief for which it prayed.

10

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

COLE & COLE,
Solicitors for Appellant.
C. L. COLE,
Of Counsel.

20

30

NEW JERSEY

Court of Errors and Appeals

Between

JOSEPH S. NAAME, COMPANY,
A CORP. &C.,
Complainant-Appellant.

and

LOUIS SATANOV REAL ESTATE
& MORTGAGE CORPORATION,
A CORP., &C.,
Defendant-Respondent.

On Appeal
from Chancery.

APPELLANT'S BRIEF

STATEMENT.

This is a bill filed by appellant to compel specific performance of an alleged parol agreement made by respondent to release a portion of the mortgaged premises from the lien of the mortgage. The bill was dismissed and from the decree the appeal is taken.

Appellant executed to respondent a purchase money mortgage in the sum of \$185,000 and by the terms of the sale agreement appellant was to construct an apartment house on a portion of the premises and a garage on the land adjoining. The apartment house was to comprise 100 rooms. Appellant claims that he built an

apartment house consisting of 172 apartments, and this is not disputed, but did not build a garage, and this is not disputed. It also claims that the modification of the sales agreement to the foregoing extent resulted from a parol agreement made to the effect that if appellant would build the apartment house of 172 apartments (which according to the proof cost approximately \$150,000 in excess of building 100 apartments), respondent would release from the operation of the mortgage the land adjoining the apartment house upon which the garage was to be constructed. When respondent was called upon to execute the release it declined to do so, and the bill was filed.

ARGUMENT.

IT WAS ERROR TO DISMISS APPELLANT'S BILL.

Respondent contended before the Vice Chancellor that the alleged parol agreement was within the Statute of Frauds in that there was a claim of an interest in land and being in parol, could not be enforced. The Vice Chancellor discusses the contention and cites authorities but seems not to have decided it. He seems to have dismissed the bill upon the ground that the alleged agreement was not established to his satisfaction.

The alleged agreement is not within the statute.

Appellant had the legal title to and was in possession of the land encumbered by the mortgage. The interest of respondent was that of a mortgagee. The mortgage is personal property. In *Blue v. Everett*, 56 *Eq. at page* 457, it is said:

“But according to the doctrine firmly established in New Jersey, no such legal situation exists. Here the mortgage vests in the mortgagee no estate whatever in the land. It merely gives him a right of entry on breach of the condition mentioned in

the instrument. Until such entry the mortgagor continues to be the legal owner of the land for all purposes."

In *Central Trust Company v. Street*, 95 Eq., page 278, this court affirmed a decree advised by Vice Chancellor Leaming and on his opinion. He held that there could be no tenancy by the entirety in a mortgage in the joint name of husband and wife for the reason that it conveyed no interest in real estate, and that such a tenancy could not be recognized in personal property.

We find no authority in New Jersey that directly rules the question. There is a discussion of it in *Degheri v. Carobine* (135 A. R. 518), by Vice Chancellor Bentley. He finds there are cases upon both sides of the subject. His mind seemed inclined to the view that since a mortgage creates no lien on the land an agreement to release is not within the statute. This case was reviewed by this court and the decree reversed without a discussion of the question here involved.

But if it be conceded that the agreement must be in writing to be enforced, the complete answer in equity is that it was wholly performed on the part of the appellant and thereby taken out of the statute by settled equity principles.

The only question in the case is one of fact and this was decided adversely to the appellant and we think erroneously. Naame testified (page 27) that the difference in the cost of the apartment constructed and that agreed to be constructed was between \$150,000 and \$175,000. This was not disputed. There was no dispute that no garage was constructed as agreed and respondent did not demur to the failure of the appellant to construct a garage as agreed. It seems manifest that there could not have been a modification of the sales agreement in these two material and very important aspects without some consideration moving to the benefit of respondent and in consequence of some agreement. Respondent denies that any agreement was made while appellant avers there was. Five witnesses testified in sub-

stantial accord as to the making of the agreement, to wit, Joseph S. Naame, Paul M. Salsburg, Jacob Salsburg, Thomas Graham and Frank R. Dwyer. Not one of the witnesses were impeached. Satanov, President of respondent, denied the agreement. The testimony on behalf of the appellant is convincing. Every witness save Naame should be regarded as wholly disinterested. But it may be claimed there is some showing that Graham and Dwyer were interested because Naame owed them some money. But they are both reputable business men in Atlantic City and that interest ought not to discredit their testimony. But they can be eliminated and still respondent has carried the burden of proof. Especial attention is called to the testimony of Jacob Salsburg, page 52, which relates to a conversation he had with Satanov. Naame's testimony is quite persuasive. It seems quite unreasonable to suppose that Naame would spend between \$150,000 and \$175,000 in excess of what he agreed to expend unless there was to be an equivalent compensation, and the mere release from building the garage was not an equivalent. By increasing the number of apartments he necessarily increased the value of the Satanov mortgage and also the income from the property. But if we eliminate all the testimony save that of Paul M. Salsburg, appellant's case is still established, Salsburg is a counsellor-at-law of this State, and while it is true he represented Naame in the transaction, his testimony is so circumstantial that it cannot be conceived how it could have been fabricated. Satanov was not asked by his counsel as to whether he had a conversation with Paul M. Salsburg or Jacob Salsburg which they claimed they respectively had, and there was no specific denial that the conversation was had. The extent of his denial was general in character that he never made the agreement. We respectfully submit this was not adequate and that the testimony of the two Salsburgs relative to a conversation with Satanov stands undenied.

Stress was laid before the Vice Chancellor on the existence of Schedule 1 and 2 to the answer which it is claimed appellant requested respondent to sign and which it refused to do. The theory is that both papers are inconsistent with the claim now made by appellant. But they are not. They were made at a time when the work was in progress and when appellant was thinking of refinancing. The agreement sought to be enforced was not enforceable until after the apartment building was completed which was after the date of said schedules.

A motive for the changed attitude of Satanov is revealed in the testimony of Paul M. Salsburg at page 45 in which it seems that Satanov demanded an additional concession and also in the testimony of Jacob Salsburg in which Satanov said he did promise to release but would not do it because Naame had been "sassy" to him. He did say he would release if Naame would make a concession by reducing the term of the mortgage from ten years to five.

We have refrained from quoting any substantial portion of the testimony so as to save the court the burden of its twice reading, but it is important that the court read the entire testimony in order to correctly determine the factual question.

The agreement sought to be enforced is convincingly established and the decree should be reversed to the end that a decree be entered for specific performance.

Respectfully submitted,

COLE & COLE,
Solicitors for Appellant.
PAUL M. SALSBURG,
Of Counsel.



NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
JOSEPH S. NAAME COMPANY, a corporation, &c.,
Complainant-Appellant,
and
LOUIS SATANOV REAL ESTATE & MORTGAGE
CORPORATION, a corporation, &c.,
Defendant-Respondent.

ON APPEAL.

BRIEF OF BOURGEOIS & COULOMB,
SOLICITORS FOR DEFENDANT-
RESPONDENT.

STATEMENT.

This is complainant's appeal from a decree dismissing its bill of complaint in the above-stated cause.

The bill was filed to obtain specific performance of an alleged oral agreement, whereby it was claimed that the defendant had orally agreed to release to complainant more than one-third of a triangular tract of land described in a mortgage made by complainant to defendant.

There were two defenses interposed: First, that no such agreement had in fact been made. Second, that no valid agreement could be made, unless in writing.

FACTS.

The facts briefly are as follows:

Prior to September, 1926, respondent was the owner of a triangular tract of vacant land, situate on the east side of Indiana Avenue, 50.77 ft. north of Atlantic Avenue, and extending thence 260.23 ft. northwardly along Indiana Avenue; thence eastwardly, at right angles to Indiana Avenue 265.66 ft.; thence southwardly to the place of beginning.

Sometime in September, of 1926, respondent agreed to sell said land to appellant, for the price of \$185,000, to be secured by a purchase money mortgage for the entire amount (p. 7). The agreement further provided that the appellant was to build upon said premises a garage on the northern or deepest end of the property, covering a frontage of approximately 50 ft., and an apartment house containing at least 100 one and two-room apartments. The agreement was drawn by William M. Clevenger, Esquire, a counsellor-at-law, who has the deserved reputation of being extremely careful and exact in the preparation of all agreements touching and concerning the interest of his client—he at that time representing respondent.

Appellant did not build the garage on the deep portion of the lot, but did build an apartment on the southern portion of the lot, containing 172 one and two-room apartments. It is his contention that the number of apartments in said house was increased

in consideration of respondent's alleged agreement to release the northern 50 ft. of the property from the mortgage, so that the appellant would own a strip of land 50 ft. in front and 266 ft. in depth, free and clear of the mortgage, and without having paid any cash consideration for it.

Louis Satanov, president of the respondent company, positively denied that he ever made any agreement to release any portion of the land from the lien of the mortgage, but, on the contrary, says that on three occasions Joseph S. Naame, president of the appellant company, presented to him different plans for the re-financing of the entire proposition, to wit: Exhibits D4 (p. 83), D5 (p. 85) and D6 (p. 86). All of these propositions were rejected by respondent (pp. 83, 85 and 87), and one of them, to wit: Exhibit D6, on the advice of counsel, Wm. M. Clevenger, Esq. (p. 73).

The area of the entire tract of land is approximately 34,580 sq. ft. The area of the part which it is sought to have released is 13,283 sq. ft., or more than one-third of the entire tract, in addition to which it is the most valuable part of the lot by reason of its depth and almost rectangular shape. Its value, therefore, with respect to the mortgage, would be approximately \$62,000.

Appellant claims that the consideration for releasing this piece of land, worth approximately \$62,000, was the building of an apartment house containing 172 one and two-room apartments, instead of 100 one and two-room apartments. It will be observed, however, upon examining the agreement (p. 7), that the contract of the appellant was not to build a 100 one and two-room apartment building, but a building containing at least 100 one and two-room apartments (p. 9, l. 28).

Appellant sets forth in its brief, the names of several witnesses to the alleged oral contract. All of these were more or less interested in seeing that the appellant obtained the release, in order that it would have assets out of which to pay their claims.

We further point out, in this connection, that nowhere was Mr. Satanov advised to consult his counsel, Wm. M. Clevenger, Esq., notwithstanding that when the written propositions (Exhibits D4, D5 and D6) were presented to him, he took the one which appealed to him most to Mr. Clevenger for Mr. Clevenger's advice, and upon that advice rejected it.

All of the propositions contained in Exhibits D4, D5 and D6, and which he rejected, were vastly more advantageous to Mr. Satanov and his company than the alleged oral agreement for the release of more than one-third in area and value of the land described in the mortgage.

ARGUMENT.

1. The opinion of the Vice-Chancellor proceeded upon the theory, first, that an oral contract to release lands from the lien of a mortgage was invalid—that such contract had to be in writing, under Section 5 of the Statute of Frauds, particularly paragraph 4 thereof.

The authorities and cases amply support the Vice-Chancellor in this conclusion.

32 A. L. R., p. 878, gives as Rule III, "Rule that oral release, discharge, or assignment is invalid by reason of the Statute of Frauds," and cites *Irwin v. Johnson* (36 N. J. Eq. 347), as a case "involving a debt secured by mortgages, that a parol declara-

tion of an intention to release the debt, does not operate as an equitable release."

"Where the purpose is to voluntarily extinguish a mortgage debt, it must be executed by an instrument as solemn as the instrument by which the debt is created." *Tulane v. Clifton* (47 N. J. Eq. 351).

Smith on Frauds, p. 505, Sec. 362, "The general rule is that a mortgage, whether considered as vesting the fee in the mortgagee, or as vesting in him a security for specified purposes, leaving the fee in the mortgagor, can only be released in writing under the Statute of Frauds. On its face it purports to convey an interest in lands subject to defeasance." Citing *Van Keuren v. McLaughlin* (19 N. J. Eq. 187) and *Clark v. Condit* (18 N. J. Eq. 358), which held that an equity of redemption was a right or estate in lands, and cannot be released except in writing.

The general rule is that the fifth section of the Statute of Frauds, relating to agreements concerning land, demands that any agreement for the release of land from any lien must be in writing. On this subject, *Corpus Juris* 27 (p. 207, Sec. 164-d) reads as follows:

"An agreement to release or discharge lands from rights, interests, or valid claims therein or thereto, or to waive, disclaim or surrender such rights, interests, or claims, is not enforceable unless in writing. But, although a parol agreement to release land, while executory, cannot be enforced, after it has been made and carried into effect by the parties, there is nothing in the statute which prevents its previous existence from being shown by parol, if it is not done with a view to maintain an action on the agreement."

Corpus Juris further lays down that while it has been held that a parol agreement to release land from a lien of a mortgage is valid, the great weight of authority is to the contrary (C. J. 27, 218, Sec. 201a).

The following agreements have been held invalid:

An agreement to relinquish all claim on the mortgaged premises. *Parker v. Parker* (2 Metc. Mass. 423.)

An agreement to accept a deed for property in satisfaction of the debt secured. *Montpelier Sav. Bank, &c. v. Follett* (68 Nebr. 416—94 N. W. 635).

An oral promise not to enforce the mortgage, either at all or for a given time. *Hunt v. Maynard* (6 Pick. Mass. 489); *Jackson v. Yoemans* (39 U. C. Q. B. 280).

In the footnotes in 27 *Corpus Juris*, p. 218, there are several cases cited in support of the proposition that an agreement to release part of the mortgaged premises must be in writing (see Note 59), and there is, apparently, but one case to the contrary, and that is a North Carolina case (see Note 58).

In the case of *Brands, et al., v. James DeWitt, et ux., et al.* (44 N. J. Eq. Rep. 545), there was involved the validity of a release given by a son to his father prior to his father's death, whereby the son released all claim to his father's estate. This was held to be a valid contract. Mr. Justice Van Sycle, speaking for the Court of Errors and Appeals, said (p. 550, &c.) that while said releases were invalid, if they concerned land, the Statute of Frauds demanded that they be in writing.

In the case of *Ware v. Chew* (43 N. J. Eq. Rep. 493), it appeared that one, S, owned two city lots with a building on one, and the other lot was vacant.

The lot, upon which the building was erected, and the building, had been leased to W, and both these lots were eventually sold to C. Before C bought the lots, he told W, the lessee, that he was going to buy the lots and build on the vacant one, and asked whether he, W, would have any objections to his building on the vacant lot, and W said that he had not, excepting that he wanted his rights under the lease respected. Upon starting to erect the building, a bill for injunction was filed by W, to prevent the building, because it interfered with his light. The Court, in deciding the case, doubted whether the oral agreement amounted to a waiver of W's rights, and further said that even if it did, it would have been invalid, because it was an interest in and concerning land.

The case of *Tulane v. Clifton* (47 Eq. 351), *supra*, was affirmed in 48 Eq. 310, and the principle was followed in the following cases:

Landon v. Hutton (50 Eq. 500); *North Ward National Bank v. Conklin* (51 Eq. 7); and *Mathishek v. Hudson* (3 Misc. Rep. 757).

In the case of *Wilber v. Jones* (80 N. J. Eq. 520), Chancellor Walker, writing the opinion of the Court of Errors and Appeals, held (p. 524):

“A mortgage has a dual character. First, it is a covenant to pay a sum of money upon an express consideration; and, second, it is a conveyance of land to secure the debt. The first is an executory contract; the second, an executed conveyance, with a defeasance.”

Counsel for the appellant seems to rest their contention upon the fact that inasmuch as a mortgage

is, under the New Jersey theory, considered to be personal property, therefore an agreement to release the same need not be evidenced by a writing. The argument is a *non sequitur*, and was conclusively disposed of by Mr. Justice Kalisch in the case of *Cooper v. Aiello* (93 N. J. L. 336). In this case, it was contended that whereas a lease of land for a period of less than three years need not be in writing, therefore an agreement to make such a lease need not be in writing. Mr. Justice Kalisch said (p. 338):

“ * * * A fundamental question which underlies the entire proceedings, and should be first disposed of, and that question is, Was the verbal agreement entered into by the litigants to make a lease a valid contract?

We think that under the doctrine declared in *Charlton v. Real Estate Co.* (Court of Errors and Appeals) (67 N. J. Eq. 629), the plaintiff's action for a breach of the verbal agreement to make a lease and to give defendant an option of two years more is not maintainable, for the reason that the agreement to make a lease for one year and to give an option for two years more was a contract relating to and concerning an interest in lands, tenements and hereditaments, and in order to be an enforceable agreement, the statute of frauds requires that there should be some memorandum or note thereof in writing and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized. *Comp. Stat.* p. 2612, §5.

It is important to bear in mind that the plaintiff's action cannot properly be based upon any lease to recover rent due, but must rest solely for support upon the verbal agreement made

with the defendant that he would enter into a written lease with her and which verbal agreement she claims he breached, and for which breach she seeks damages. It is, therefore, plain that Section 1 of the Statute of Frauds (Comp. Stat. p. 2610) which relates to leases, &c., is not applicable to the situation here."

Stevens v. Turlington (186 N. C. 191, S. E. 210, 32 A. L. R. 870), is the case annotated and under which annotation the rule above is quoted, held:

"That an unexecuted verbal agreement made by a mortgagee for a valuable consideration to release a real estate mortgage does not come within the Statute of Frauds of that State, because a distinction is made between contracts to sell or convey which are the words used in the act, and the contracts or agreements made between vendor and vendee, mortgagor and mortgagee, after that relation between them is established, and which are intended to terminate that relation."

The contention advanced by appellant in their brief that a mortgage is personal property, is not in point. It is no more true that a piece of land may be released from the lien of a mortgage without the agreement being in writing, than it is that a piece of land, not originally included in a mortgage, could be subjected to it without an agreement in writing. The personal property character of a mortgage has to do with the transmission of the title to the mortgage, itself, by assignment, &c., and not to the inclusion, exclusion or release of the lands described therein. The point was not decided by Vice-Chancellor Bentley in the case of *Degheri v. Carobine* (136 Atl. 518). He alludes to it, but it

was not necessary to decide it. No doubt had it been, Vice-Chancellor Bentley would have recognized the authorities cited by Vice-Chancellor Ingersoll in his opinion in the present case, and decided the point as Vice-Chancellor Ingersoll did.

2. The appellant contends that even if the agreement to release must be in writing, nevertheless, under certain well-recognized principles of equity, there has been such a part performance as to take it out of the statute.

The learned Vice-Chancellor, in the present case, found as a matter of fact that there was not such certain proof of the alleged oral agreement as to warrant the application of these principles.

In disposing of this phase of the case, the Vice-Chancellor cites the case of *Polakoff v. Halphen* (83 N. J. Eq. 126), an opinion by Vice-Chancellor Leaming, as follows (p. 128):

“An examination of these cases will disclose the accepted rule in this State to be that when the agreement or license, whether founded in parol or in writing, is clearly established and includes either express or implied authorization by the licensor for the licensee to occupy the land of the licensor, and the license has been executed by possession in such manner that its revocation would be operative as a fraud upon the licensee, a court of equity will protect the licensee such rights as the licensor expressly or impliedly conferred. This is indeed no more than an equitable application of the essential principles of estoppel as applied in *Short v. Taylor* and approved in *Lawrence v. Springer, supra.*”

In *Hartman v. Powell* (68 N. J. Eq. 293), at p. 296, the last Vice-Chancellor Grey said:

“The terms of that statute declare that the force and effect of a parol agreement, creating an interest in lands, shall be to pass an estate at will only, whether it be asserted in law or in equity. Courts of equity have, however, in certain special cases, given relief against the operation of that statute, usually for the enforcement of the declared purpose of that act, as a statute to prevent frauds. Bills filed by a party who has performed his side of a parol bargain for the conveyance of lands to compel the other party specifically to perform the parol agreement, and other cases, where the enforcement of the statute will itself operate as a fraud, are within this class.

“In this State, the Court of Errors and Appeals has, with respect to this action of the Statute of Frauds, declared that in all cases in which any Court has validated parol contracts passing an interest in land, the contract itself has been required to be proved to the point of demonstration. *Lawrence v. Springer* (49 N. J. Eq. 297); *Barbour v. Barbour* (51 N. J. Eq. 267).

It is proper, therefore, in this suit, in which the complainant's asserted right is in direct contravention of the Statute of Frauds, to inquire whether the complainant presents such a case as under these decisions amounts to a demonstration of her equity.”

It is a well recognized principle in equity that before the Court can determine the effect of part performance of the alleged oral contract, it must first determine the existence of such alleged oral contract, and in such a case the existence of the oral

contract must be demonstrated to a certainty by clear, convincing and unequivocal testimony. The learned Vice-Chancellor, after having heard testimony of the various witnesses, seeing their attitude upon the stand, considering their interest in the case, considering the fact that after the alleged oral agreement, appellant presented three plans for re-financing, all of which were rejected, considering the large value of the land sought to be released, as compared with the entire tract of land, decided that the contract in question had not been proved with that certainty which permits it to be enforced because of alleged part performance.

In addition to all this, we point out that it does not follow that because the appellant company built an apartment house containing 172 one and two-room apartments, instead of one containing 100 one and two-room apartments, that this was in part performance of the alleged contract, as we have shown that the agreement provided that the apartment house should contain at least 100 one and two-room apartments *non constat* that an apartment house containing 172 one and two-room apartments was in performance of an alleged oral contract. Furthermore, it is quite as consonant with the facts that the building of the additional apartments was in lieu of building of the garage on the piece of land now sought to be released.

We respectfully submit that the Vice-Chancellor's opinion upon all of the issues involved in this case, both of law and of fact, was consonant with the truth and with well recognized principles of equity, and that the decree entered thereunder should be affirmed.

Respectfully submitted,

BOURGEOIS & COULOMB,

*Solicitors for and of Counsel
with Defendant-Respondent.*

