

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

ORDER

RECEIVED AND FILED
PHILADELPHIA
COMMONWEALTH COURT
OF PENNSYLVANIA
MAR 21 3 35 PM '03

AND NOW this ___ day of _____, 2003, this Court having considered the Petition of

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her capacity as Liquidator ("Liquidator") of Reliance Insurance Company ("Reliance"), for Approval of the sale of certain Reliance properties located in the Ryan Park Center, Loudoun County, Virginia, including: 1) the sale of Tax Map 79, Parcel 25D, 8.1508 acres, to Church Road Limited; 2) the sale of a 1.1198 acre parcel, also located in Ryan Park Center, to 350 South Washington, LLC; and 3) the sale of Tax Map 79, Parcel 24, 1.5 acres, to Church Road Limited; and considering that the sale prices of the proposed transactions exceed the appraised market values of said properties, the Petition is GRANTED. The Agreements of Sale marked as Exhibits "A", "B" and "C" attached to the Petition relating to the sale of these Parcels are hereby APPROVED; and the Liquidator is authorized to take any and all actions necessary to execute, deliver, perform, and consummate those Agreements and any related documents.

Hon. James Gardner Colins, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff,

v.

RELiance INSURANCE COMPANY,

Defendant.

DOCKET NO. 269 MD 2001

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COMMONWEALTH OF PENNSYLVANIA
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**PETITION FOR APPROVAL OF SALE OF THREE PARCELS IN
RYAN PARK CENTER, LOUDOUN COUNTY, VIRGINIA**

Petitioner M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania (the "Commissioner"), in her official capacity as Liquidator (the "Liquidator") of Reliance Insurance Company ("Reliance"), respectfully requests that this Court enter an order authorizing the Liquidator to transfer three (3) parcels of real property held by Reliance and approving Agreements of Sale for two of those parcels between Reliance and Church Road, Limited ("Church Road") and approving one Agreement of Sale between Reliance and 350 South Washington, L.L.C. ("350 South Washington"), a related entity to Church Road (the "Agreements"). Pursuant to the Agreements, if approved, Reliance intends to convey the following real property located in the Ryan Park Center: (1) to Church Road, Tax Map 79, Parcel 25D ("Parcel 25D"), an approximately 8.1508 acre parcel as described below and in the Agreement of Sale attached at Exhibit "A"; (2) to 350 South Washington, an approximately 1.1198 acre parcel ("1.1198 Acre Parcel") as described below and in the Agreement of Sale attached at Exhibit "B"; and (3) to Church Road, Tax Map 79, Parcel 24 ("Parcel 24"), an

approximately 1.5 acre parcel as described below and in the Agreement of Sale attached at Exhibit "C".

In support of this Petition, the Liquidator avers the following:

BACKGROUND

1. On October 3, 2001, this Court found Reliance insolvent and appointed the Commissioner as Liquidator of Reliance pursuant to Article V of the Insurance Department Act of 1921, 40 P.S. § 221.1 et seq. (hereinafter, the "Act").

2. The Act confers broad powers on the Liquidator to dispose of the assets of Reliance in order to maximize the value of the insolvent insurer's estate for eventual distribution to the Company's policyholders and creditors. See 40 P.S. § 221.23.

3. At the time of its declared insolvency, Reliance's assets included several parcels of real property located in what is commonly known as the Ryan Park Center, Loudoun County, Virginia, including the Property described in the Agreements.

4. The Ryan Park Center ("Center"), consisting of approximately 111 acres of land, was purchased as part of a larger transaction on April 3, 1989, pursuant to which a Reliance subsidiary purchased the Center for approximately \$11,009,000. The 111 acres were later transferred to Reliance by the subsidiary. The unit cost of the land involved in that transaction was \$2.28 per square foot. Subsequently, a total of 37 acres were dedicated for use in toll road construction (34 acres), and reserved for mass transit parking (3 acres) for a period of ten (10) years. Additionally, 42.6 acres were sold previously in a series of transactions for net sale prices totaling approximately \$8,743,060. The instant Petition proposes the sale of approximately 10.7706 acres of the remaining property.

5. Church Road and 350 South Washington are related entities which currently own certain parcels of land adjacent to the Ryan Park Center.

6. Church Road seeks to acquire Parcel 25D as a development site.

7. 350 South Washington and Church Road seek to acquire the 1.1198 Acre Parcel, and Parcel 24, respectively, to incorporate into other properties currently owned by those entities.

PROPOSED SALE NO. 1: CHURCH ROAD, PARCEL 25D, 8.1509 ACRES.

8. The Agreement attached at Exhibit "A" ("Parcel 25D Agreement") proposes the sale of Parcel 25D to Church Road. Attached to the Parcel 25D Agreement at Schedule A/A-1 are plans illustrating Parcel 25D.

9. Parcel 25D, totaling 8.1509 acres, is comprised of approximately 4.35 acres of usable land and 3.8 acres of unusable land. The unusable land essentially encompasses the area of a proposed stormwater basin identified in the Agreement as Stormwater Management Pond A (approximately .8 acres), and approximately 3.0 acres that have been reserved for the use of Loudoun County, Virginia for future mass transit parking (See ¶ 4).

10. The Liquidator retained CB Richard Ellis, Inc. ("Broker"), a licensed real estate broker, to assist in the marketing and sale of Parcel 25D.

11. After it was retained by Reliance, CB Richard Ellis extensively marketed the Property.

12. Based on those efforts, an Agreement of Sale was negotiated between Reliance and Dominion Medical Facilities, LLC ("Dominion Medical Agreement").

13. Pursuant to a Petition filed with this Court on March 6, 2002, this Court issued an Order on March 11, 2002 approving the sale of Parcel 25D to Dominion Medical for a purchase price equal to \$5.50 per square foot of the net usable acreage ("Dominion Medical Agreement").

14. The Dominion Medical Agreement included a condition that Reliance obtain site plan approval for Parcel 25D by the Agreement's Outside Closing Date. If subdivision approval was not obtained by that date, Dominion Medical had the option of terminating the Agreement. Due to protracted delays in Loudoun County's processing of Reliance's subdivision application, subdivision approval was not obtained by the Outside Closing Date. Because Dominion Medical had been unable to complete a lease with its prospective tenants for the property by that Outside Closing Date, it then exercised its option to terminate the Agreement pursuant to its terms. Dominion Medical's deposit was subsequently returned.

15. After the transaction with Dominion Medical failed, CB Richard Ellis renewed its marketing of the property. Parcel 25D was again listed for sale, and the sign advertising its availability was again placed on the property. CB Richard Ellis also marketed the property by approaching certain of its business contacts, and by again contacting other entities who had previously expressed an interest in Parcel 25D or other Reliance properties. These efforts resulted in only four (4) expressions of interest in Parcel 25D. Three of the other prospective purchasers quickly dropped out of the process. Only Church Road followed through on its expression of interest in Parcel 25D, and the Parcel 25D Agreement was then negotiated between Reliance and Church Road.

16. The parties have completed their negotiations, and Church Road has executed the Agreement attached at Exhibit "A".

17. Pursuant to Paragraph 10.1(b), the Parcel 25D Agreement is expressly contingent upon approval of this Court.

18. Pursuant to Paragraph 3 of the Parcel 25D Agreement, Reliance will convey the Property to Church Road for a purchase price of One Million One Hundred Thirty Seven

Thousand, Six Hundred Seventy Four Dollars (\$1,137,674), equal to \$6.00 for each square foot of net usable acreage included in Parcel 25D (the "Parcel 25D Purchase Price").

19. The \$6.00 per square foot price is a \$.50 per square foot premium over the price Dominion Medical had agreed to pay for Parcel 25D.

20. Pursuant to Paragraph 3.1(a) of the Parcel 25D Agreement, Church Road will pay an initial deposit of One Hundred Thousand Dollars (\$100,000) into escrow at the signing of the Agreement.

21. Pursuant to Paragraph 3.1(b) of the Parcel 25D Agreement, the balance of the Parcel 25D Purchase Price is to be paid at Closing.

22. Pursuant to Paragraph 5.1 – 5.3 of the Parcel 25D Agreement, Church Road has agreed to accept the Property in an "as is" condition, and Reliance has no obligation to cure any code or related violations.

23. Pursuant to Paragraph 9.2 of the Parcel 25D Agreement, Reliance's closing expenses are limited to its cost of preparing the Deed, its payment of Virginia's Grantor tax, and its attorney's fees.

24. Pursuant to Paragraph 14.1 of the Parcel 25D Agreement, Church Road is provided a due diligence review period, and has the right to cancel the Agreement, in its sole and absolute discretion, for up to twenty-five (25) days following Court approval of the Agreement. There are no requirements for site plan or subdivision approvals, or for any seller improvements prior to closing.

25. Pursuant to Paragraph 15(a) of the Parcel 25D Agreement, Reliance is required to complete and construct certain portions of an access roadway and install certain water and sewer lines, as illustrated on Exhibit 4 attached to the Agreement. These improvements were also

required by the Dominion Medical Agreement, and as such, have already been completed by Reliance.

26. Pursuant to Paragraphs 13.3 and 15(b) of the Parcel 25D Agreement, Church Road has covenanted, which covenants will survive closing, to complete and perform various improvements and land development obligations on the Property.

27. Pursuant to Paragraph 17 of the Parcel 25D Agreement, Reliance has the option, to be exercised no later than ten (10) years after the closing of this transaction, to repurchase all, or part, of the Unusable Land -- an area of approximately 3.8 acres.

28. Pursuant to Paragraph 13.1 of the Parcel 25D Agreement (and the separate broker's agreement referenced therein), the Broker's commission is 5% of the first \$1,000,000 of the Purchase Price, and 3% of the Price in excess of \$1,000,000, for an effective rate of 4.75%.

29. Based on this formula as applied to the Parcel 25D Purchase Price, the Broker's commission to be paid by Reliance to CB Richard Ellis upon closing will total approximately \$55,507.

PROPOSED SALE NO. 2: 350 SOUTH WASHINGTON, 1.1198 ACRES

30. The Agreement attached at Exhibit "B" ("1.1198 Acre Parcel Agreement") proposes the sale of the 1.1198 Acre Parcel to 350 South Washington.

31. The 1.1198 Acre Parcel is essentially an irregularly configured remainder parcel created by the various subdivision approvals granted with regard to the Ryan Park Center. Plans illustrating the 1.1198 Acre Parcel are attached as Exhibit 3 to the 1.1198 Acre Parcel Agreement. The 1.1198 Acre Parcel is indicated on those plans as "Part of Parcel 25A, Old Area B, 48,775 square feet".

32. Based on Church Road's contacts with the Liquidator as a part of Church Road's proposed purchase of Parcel 25D, the principals of Church Road expressed an interest in acquiring the 1.1198 Acre Parcel through and for 350 South Washington.

33. 350 South Washington seeks to acquire the 1.1198 Acre Parcel because it is adjacent and contiguous to a 3.3638 acre property it currently owns.

34. Due to its configuration and location, the Liquidator believes that the 1.1198 Acre Parcel cannot be used as an independent, stand-alone property, and that its only utility is as a parcel to be incorporated and consolidated into 350 South Washington's existing 3.3638 acre property.

35. The Liquidator retained CB Richard Ellis, Inc. ("Broker"), a licensed real estate broker, to assist in the marketing and sale of various properties in the Ryan Park Center.

36. CB Richard Ellis confirmed the Liquidator's belief that the 1.1198 Acre Parcel is essentially unmarketable as an independent, stand-alone property.

37. As such, the Agreement attached at Exhibit "B" was negotiated between Reliance and 350 South Washington for the sale of the 1.1198 Acre Parcel.

38. The parties have completed their negotiations and have executed the Agreement attached at Exhibit "B".

39. Pursuant to Section 3 of the 1.1198 Acre Parcel Agreement, Reliance will convey the 1.1198 Acre Parcel to 350 South Washington for a purchase price of Ten Dollars (\$10.00) (the "1.1198 Acre Parcel Purchase Price").

40. The nominal consideration related to this proposed transaction was negotiated based on Church Road's willingness to pay the \$.50 per square foot premium related to Parcel 25D as described herein at Paragraphs 18 and 19.

41. Pursuant to Paragraphs 3 and 4 of the 1.1198 Acre Parcel Agreement, 350 South Washington is to deposit Five Thousand Dollars (\$5,000.00) as escrow upon signing the Agreement, which deposit will be credited to the 1.1198 Acre Parcel Purchase Price at closing, with the balance returned to 350 South Washington.

42. Pursuant to Paragraph 9.2(a) of the 1.1198 Acre Parcel Agreement, Reliance's closing expenses are limited to its cost of preparing the Deed and Plat, its payment of Virginia's Grantor tax, and its attorney's fees.

43. Pursuant to Paragraph 10.1(d) of the 1.1198 Acre Parcel Agreement, the sale of the 1.1198 Acre Parcel is expressly contingent upon approval of this Court.

44. Pursuant to Paragraph 10.1(c) of the 1.1198 Acre Parcel Agreement, the sale of the 1.1198 Acre Parcel is also expressly contingent upon the purchase of Parcel 25D by Church Road or a related entity.

45. Pursuant to Paragraph 13.1 of the 1.1198 Acre Parcel Agreement, the Broker's commission is established at 5% of the sale price, which nominal commission is to be paid by Reliance to CB Richard Ellis upon closing.

46. Pursuant to Paragraph 14.1 of the 1.1198 Acre Parcel Agreement, 350 South Washington is provided a due diligence review period, and has the right to cancel the Agreement, in its sole and absolute discretion, for up to twenty-five (25) days following Court approval of the Agreement.

PROPOSED SALE NO. 3: CHURCH ROAD, PARCEL 24, 1.5 ACRES

47. The Agreement attached at Exhibit "C" ("Parcel 24 Agreement") proposes the sale of Parcel 24 to Church Road

48. Parcel 24, approximately 1.5 acres, contains a storm water management pond and related easements, serving the Ryan Park Center ("Pond B").

49. The Parcel 24 Agreement attached at Exhibit "C" is final as to all its material terms, and has been executed by Church Road.

50. Pursuant to the land development approvals and agreements relating to the Ryan Park Center, Reliance and its successor, the Commercial Owners Association of Ryan Parcel Center, have certain maintenance and related obligations with respect to Parcel 24 to assure that Pond B functions appropriately in providing storm water control for the Center.

51. The projected annual maintenance costs related to Pond B have been estimated at \$2,000 to \$4,000.

52. Pursuant to Paragraph 3 of the Parcel 24 Agreement, Reliance will convey Parcel 24 to Church Road for consideration including: 1) a purchase price of One Hundred Dollars (\$100.00) (the "Parcel 24 Purchase Price"), and (2) the assumption by Church Road of all Reliance's future maintenance obligations with respect to Parcel 24 and Pond B.

53. Pursuant to Paragraph 4 of the Parcel 24 Agreement, Church Road is to deposit Ten Dollars (\$10.00) into escrow within three business (3) days of the effective date of the Agreement.

54. Pursuant to Paragraph 5 of the Parcel 24 Agreement, Parcel 24 is to be conveyed in its as-is, where-is condition through Reliance's execution of a quit-claim deed.

55. Pursuant to Paragraph 9 of the Parcel 24 Agreement, Church Road is to bear all closing costs, including payment of Virginia's Grantor tax, all recordation fees, and any escrow or title charges.

56. Pursuant to Paragraph 11(a) and (c) of the Parcel 24 Agreement, the sale of Parcel 24 is expressly contingent upon approval of this Court.

57. There is no broker's commission or fee related to this transaction.

**THE TRANSACTIONS ARE IN
THE BEST INTEREST OF THE ESTATE**

58. The Liquidator has taken steps to determine whether the Parcel 25D Purchase Price, the 1.1198 Acre Parcel Purchase Price, and the Parcel 24 Purchase Price constitute fair value to Reliance for the respective Properties. See 40 P.S. § 221.23(7), (9) (authorizing the Liquidator to sell assets of the insurer on fair and reasonable terms). After reviewing the terms of the transactions and obtaining independent, professional advice as to the fair market value of the Properties, the Liquidator is satisfied that the proposed transactions will yield fair value to Reliance.

59. The Liquidator's belief relative to Parcel 25D is based on the fact it obtained the advice of a licensed real estate appraiser, Mr. Robert G. Johnson, MAI, of JMSP, Inc., Herndon, Virginia. Mr. Johnson appraised the balance of the Ryan Park Center property remaining with Reliance as of November 26, 2001. Based on that appraisal, he concluded that the fair market value of the remaining land was between \$4.50 and \$5.50 per square foot. See Exhibit "D". As such, the Parcel 25D Purchase Price of approximately \$6.00 per square foot exceeds the fair market value of Parcel 25D, as determined by Mr. Johnson.

60. As noted herein, the Parcel 25D Purchase Price essentially includes a \$.50 per square foot premium, totaling about \$94,743, that Church Road is willing to pay for Parcel 25D because 350 South Washington, its related entity, will also be acquiring the 1.1198 Acre Parcel.

61. The premium being paid by Church Road for Parcel 25D provides further support for the Liquidator's belief that the Parcel 25D Purchase Price is reasonable and in the best interest of the estate.

62. With regard to the 1.1198 Acre Parcel Purchase Price and the Parcel 24 Purchase Price, the Liquidator also believes that those prices are reasonable and in the best interest of the estate.

63. The Liquidator's belief relating to the both the 1.1198 Acre Parcel and the Parcel 24 Purchase Prices is based upon a second appraisal it obtained from Mr. Johnson dated February 22, 2003. In this appraisal, Mr. Johnson concluded that both the 1.1198 Acre Parcel (designated therein as part of Parcel 25A) and Parcel 24 essentially had no value due to their configuration and location. A copy of this Appraisal is attached at Exhibit "E".

64. The Liquidator's belief regarding the 1.1198 Acre Parcel Purchase Price is also based upon the premium being paid by Church Road for Parcel 25D.

65. In addition, the Liquidator's belief regarding the Parcel 24 Purchase Price is based upon the fact that Reliance will be relieved of its maintenance obligations relating to Parcel 24 and Pond B, as well as ongoing costs such as real estate taxes.

66. The Liquidator believes that the terms of these transactions are fair to Reliance and in the best interests of the insurer's estate, its policyholders, claimants and the general public. See 40 P.S. § 221.1(c); see also 40 P.S. § 221.23(7)(9) (authorizing the Liquidator to "conduct public and private sales of property of the insurer" and to "acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon terms and conditions as are fair and reasonable.") (emphasis added).

67. The Liquidator further believes that the sale of the three Properties as proposed herein will help her in achieving the objectives of liquidation under the Act, 40 P.S. § 221.1 et seq. This transaction will assist the Liquidator in marshalling the insurer's assets to minimize

and apportion equitably any unavoidable loss to policyholders, claimants and creditors resulting from Reliance's insolvency and hazardous financial condition. See 40 P.S. § 221.1(c).


68. The Liquidator believes that Church Road and 350 South Washington are financially able to consummate the three transactions. The Liquidator's belief is based on a letter dated February 10, 2003, from Church Road's attorney, David C. Culbert, Esq., in which Mr. Culbert indicates that Church Road has access to in excess of One Million, Five Hundred Thousand Dollars (\$1,500,000) in deposited funds held in the accounts of a qualified intermediary. A copy of Mr. Culbert's letter is attached at Exhibit "F".

69. Accordingly, the Liquidator respectfully requests that this Court (1) approve the terms of the three Agreements; and (2) authorize the Liquidator to take any and all actions necessary to perform under the Agreements or any related documents and to consummate the transactions pursuant to her authority under 40 P.S. § 221.23.

WHEREFORE, the Liquidator respectfully requests that this Court grant the Petition, enter an Order in the form attached hereto, and order such other relief as this Court deems necessary and appropriate.

BLANK ROME LLP

By:



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Attorneys for Plaintiff
M. Diane Koken, Insurance Commissioner of the
Commonwealth of Pennsylvania, in her official capacity
as Liquidator of Reliance Insurance Company


Dated: March 21, 2003

VERIFICATION

I, WILLIAM S. TAYLOR, Deputy Insurance Commissioner of the Pennsylvania Insurance Department, Office of Liquidations, Rehabilitations and Special Funds, am authorized by M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, pursuant to 40 P.S. § 221.23, to act on her behalf in her capacity as the Liquidator of Reliance Insurance Company. I hereby verify that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

I understand that this Verification is made subject to the penalties of 18 P.S. § 4904 relating to unsworn falsification to authorities.

Date: March 18, 2003


WILLIAM S. TAYLOR
Deputy Insurance Commissioner of the
Pennsylvania Insurance Department

CERTIFICATE OF SERVICE

I, WILLIAM F. KERR, hereby certify that on or about this day a true and correct copy of the foregoing Petition was served on all persons listed on the attached Master Service List by U.S. Mail, postage prepaid.

Dated: March 21, 2003



WILLIAM F. KERR

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v.

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