

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

RECEIVED AND FILED  
COMMONWEALTH COURT  
OF PENNSYLVANIA  
2004 MAY 26 P 2:03

ORDER

AND NOW this \_\_\_ day of \_\_\_\_\_, 2004, 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 Sale of Virginia Tax Map 93, Parcel 13, Loudoun County,  
Virginia ("Parcel") to TC Midlantic Development, Inc., and considering that the purchase  
price is consistent with the appraised value of said property, the Petition is GRANTED.  
The Agreement of Sale marked as Exhibit A and attached to the Petition relating to the sale  
of this Parcel is hereby APPROVED; and the Liquidator is authorized to take any and all  
actions necessary to execute, deliver, perform, and consummate the Agreement and any  
related documents.

\_\_\_\_\_  
Hon. James Gardner Colins, President Judge

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**PETITION FOR APPROVAL OF SALE OF  
TAX MAP 93, PARCEL 13, 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 real property held by Reliance and approving the Agreement of Sale (the "Agreement") between Reliance and TC Midlantic Development, Inc. ("TC Midlantic"). Pursuant to the Agreement, if approved, Reliance intends to convey to TC Midlantic real property consisting of approximately 26.19 acres as described below and in the Agreement (the "Property"). A copy of the executed Agreement is attached as Exhibit A.

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

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 in Loudoun County, Virginia, including the Property described in the Agreement.

4. The Property that is the subject of this Agreement is designated as Virginia Tax Map 93, Parcel 13, Loudoun County, Virginia.

5. The Property was purchased in 1987 as part of Reliance's acquisition of 409 acres for a purchase price approximating \$26,634,439, or \$1.49 per square foot. Of the 409 acres acquired, 112.5 acres were zoned residential, and 296.5 acres were zoned commercial. At \$1.49 per square foot, the 112.5 acres of residential land had an underlying pro rata cost of approximately \$7,301,745. During the course of obtaining various governmental approvals, approximately 41.5 residential acres were designated and/or dedicated as flood plain, community recreational space, or for roadway improvements. Of the remaining 71 net acres of residential land, 50 acres were sold in four transactions between 1999 and 2001 for approximately \$5,014,000. The sale of the remaining 21.01 residential acres, was approved by this Court in 2002 for a minimum sale price of \$17,956,800. That sale closed in December, 2002.

6. The Property is part of the 296.5 commercial acres described above. The Property was also one of the parcels originally included in the proposed sale of 211.81 acres of the commercially zoned land to Toll Brothers Realty Trust for \$16,511,000 (\$1.79/square

foot). The proposed sale to Toll Brothers was approved by this Court's Order dated February 28, 2003 (Copy attached at Exhibit B).

7. The balance of the commercial land, 84.69 acres, had been dedicated for various rights-of-way or public uses during the initial rezoning and subdivision approval process for the Loudoun Parkway Center.

8. The agreement of sale for the transaction with Toll Brothers Realty Trust was terminated after Toll Brothers demanded price concessions during its due diligence period, which concessions were deemed unacceptable by Reliance.

9. Cassidy and Pinkard ("Broker") represented Reliance as its broker in connection with the marketing and sale of the Property both before and after the Toll Brothers transaction was terminated.

10. In its initial efforts to market the Property, Cassidy and Pinkard had sent information packages regarding the Loudoun Parkway Center to all local and national developers doing business in the Washington area, seeking buyers to purchase the 211.81 acres of land on an as-is basis. Toll Brothers was the highest bidder and was selected from this pool of purchasers. After the termination of the Toll Brothers contract, certain of the competing bidders were reapproached by Cassidy and Pinkard, but they declined to pursue the property. It was determined that the Loudoun Parkway Center was not saleable on an as-is basis at or near the appraised value.

11. Based on the lack of interest in the property as zoned, Reliance then investigated the possibility of rezoning selected portions of the remaining commercial land.

12. In that review, Reliance discovered that there is currently a more significant market for retail commercial uses than for office commercial uses. It was further determined that a mixed use site, having significant retail uses in place, would present a better marketing platform for the sale of the remaining office land, as office users will demand the immediate availability of a variety of retail services.

13. As such, Reliance developed a strategy to consider rezoning certain parts of the commercial land, to allow portions to be used for retail commercial, portions for the office commercial-type uses allowed by current zoning, and portions for residential uses.

14. In June of 2003, TC Midatlantic, a subsidiary of Trammel Crow, and which was one of the initial bidders, submitted an offer to purchase a portion of the Loudoun Parkway Center (the "Property") at a significantly higher price than any previously offered, subject to Reliance's obtaining a change in the zoning to allow retail commercial uses. TC Midatlantic's offer was selected because it represented an opportunity to obtain a significantly higher price for this portion of the Loudoun Parkway Center, and because such a sale was likely to ignite the interest of other purchasers and improve the prospects of selling the remainder of Loudoun Parkway Center at a significantly higher value. TC Midatlantic was also selected because of its credibility in the marketplace and familiarity with the Property.

15. Reliance and TC Midatlantic have completed their negotiations, and have executed the Agreement dated January 12, 2004, a copy of which is attached at Exhibit A.

## SUMMARY OF THE TERMS OF THE AGREEMENT

16. The Agreement is expressly contingent upon approval of this Court as set forth in Section 10.1(d) of the Agreement.

17. Pursuant to Paragraph 3.1 of the Agreement, the purchase price to be paid by TC Midatlantic for the Property is Seven Million, Five Hundred Ninety-Nine Thousand, Two Hundred Forty-Seven Dollars (\$7,599,247) ("Purchase Price"), or \$6.66 per square foot.

18. Pursuant to Paragraph 4.1 of the Agreement, TC Midlantic was to pay an initial deposit of One Hundred Thousand Dollars (\$100,000.00) into escrow within two (2) business days of the effective date of this Agreement.

19. Pursuant to Paragraph 5.1 of the Agreement, TC Midlantic has agreed to accept the Property in an "as-is" condition.

20. Pursuant to Paragraph 5.2 - 5.3 of the Agreement, Reliance is obligated to spend up to \$25,000 to cure any code or other violation that may be issued by any governmental entity after the effective date of the Agreement, and until the date of closing.

21. Pursuant to Paragraphs 7.4 and 16 of the Agreement, Reliance's most significant obligation would be to pursue the re-zoning of the Property to allow retail commercial uses (as specified in Paragraph 7.4), and to seek subdivision approval if required (as specified in Paragraph 16).

22. Reliance intends to pursue the rezoning of the subject 26.19 acres. At the same time, it will attempt to re-zone portions of the balance of the commercial property for sale to future purchasers.

23. Pursuant to Paragraph 14.1 of the Agreement, TC Midlantic has ninety (90) days from the date Reliance provides notice of Court approval to perform its due diligence (“Purchaser’s Review Period”), and to terminate the Agreement if it discovers any condition that it deems unacceptable.

24. Pursuant to Paragraphs 4.2 and 14.1 of the Agreement, if TC Midlantic does not terminate the Agreement within that ninety (90) day Purchaser’s Review Period, it is required to increase the deposit escrow to a total of Two Hundred Thousand Dollars (\$200,000) at that time.

25. Pursuant to Paragraph 7.4(a) of the Agreement, within sixty (60) days after the expiration of TC Midlantic’s Purchaser’s Review Period (referenced therein as the “Outside Termination Date”), Reliance is to file an application seeking to re-zone the Property to allow the construction of at least 150,000 square feet of retail commercial space, with office commercial usage of the remainder at specified densities and parking ratios.

26. Pursuant to Paragraph 7.4(b) of the Agreement, TC Midlantic is responsible for the preparation of all specific plans, reports, studies and other data necessary for Reliance’s use in the re-zoning process, and for any requirements or conditions imposed as part of any re-zoning decision, unless expressly agreed otherwise.

27. Pursuant to Paragraph 16 of the Agreement, Reliance will be responsible for the costs attendant to any required subdivision of the Property, including the costs of any subdivision plan.

28. Pursuant to Paragraphs 9.1, 10, and 14.2 of the Agreement, the date for closing is tied to the satisfaction of various conditions, but would occur, if all other

conditions are satisfied, no later than approximately 28 months after Court approval of the Agreement.

29. Pursuant to Paragraph 9.2 of the Agreement, Reliance's closing expenses are limited to its cost of preparing the Deed, its payment of Virginia's Grantor Tax, the costs of zoning counsel required to obtain re-zoning approval, the costs of any required subdivision approval, and its attorneys' fees. While this section of the Agreement also lists roll back taxes as Reliance's obligation, there will be no roll-back taxes as the result of this transaction.

30. Pursuant to Paragraph 13.1 of the Agreement, Reliance is also obligated to pay Cassidy and Pinkard a Broker's fee. This fee is established by Reliance's brokerage agreement with Cassidy and Pinkard at 5% of the first \$1,000,000, and 3% of the balance.

31. Based on the \$7,599,247 purchase price, the Broker's fee payable by Reliance at closing would total approximately \$247,999, or 3.26% of this purchase price.

32. An Amendment to the Agreement was executed by the parties on March 22, 2004. A copy is attached at Exhibit C. This Amendment provides at Paragraph 2 that Paragraph 10.1(d) of the Agreement is deleted in its entirety. It also sets forth replacement language indicating the Court approval contingency, and extends the date for Court approval until July 30, 2004.

**THE TRANSACTION IS IN  
THE BEST INTEREST OF THE ESTATE**

33. The Liquidator has taken steps to determine whether the Purchase Price constitutes fair value to Reliance for the Property. *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 transaction and obtaining independent, professional advice as to the fair market

value of the Property, the Liquidator is satisfied that this transaction will yield fair value to Reliance.

34. The Liquidator believes that the Purchase Price represents fair value because it obtained updated advice from Robert G. Johnson, MAI of JMSP, Inc. in Herndon, Virginia who prepared a new appraisal report dated February 24, 2004. A copy of this appraisal report is attached as Exhibit D. Mr. Johnson's appraisal refers to the Property as Parcel M, and values it as if it were re-zoned consistent with TC Midlantic's proposed retail commercial zoning. Mr. Johnson's report indicates a fair market value for the Property of Seven Million Seven Hundred Thousand Dollars (\$7,700,000). As such, the Liquidator believes that the Purchase Price represents fair value.

35. The Liquidator also believes that the Purchase Price is fair because it represents approximately 46% of the Purchase Price approved by this Court for the Toll Brothers Realty Trust transaction, but includes only approximately 16% of the net developable average that was to have been sold to Toll Brothers. Moreover, the Purchase Price per square foot of land is \$6.66, which is 3.7 times more than the \$1.79 per-square-foot price approved for the Toll Brothers transaction.

36. The Liquidator believes that the terms of this transaction are fair to Reliance and are 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).

37. The Liquidator further believes that the sale of the Property 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).

38. The Liquidator believes that TC Midlantic is financially able to consummate this transaction. TC Midlantic is wholly owned by Trammell Crow Company. Trammell Crow has indicated that it will make funding available to TC Midlantic so that TC Midlantic is able to perform its obligations under the Agreement. A copy of a Trammell Crow Company letter dated February 25, 2004 confirming this fact is attached at Exhibit E.

39. Trammell Crow Company has also provided Reliance with a copy of a January 24, 2004 Press Release on its 2003 financial results. This Press Release indicates that Trammell Crow had net income of \$21,000,000 for 2003 (Press Release, page 1), and that as of December 31, 2003, it had \$105,616,000 in cash or cash equivalents (Press Release, pages 4 and 7). A copy of the Press Release is attached at Exhibit F.

40. Based on this information, the Liquidator believes that TC Midlantic, through Trammell Crow, is capable of completing this transaction.

41. The Liquidator also believes that the Agreement and the Amendment will allow for an expeditious transfer of the Property to TC Midlantic, if the desired re-zoning is accomplished. Moreover, a successful re-zoning could significantly increase the

marketability and value of Reliance's remaining Loudoun Parkway Center commercial acreage.

42. Accordingly, the Liquidator respectfully requests that this Court (1) approve the terms of the Agreement; and (2) authorize the Liquidator to take all actions necessary to perform under the Agreement and to consummate the transaction pursuant to her authority under the Act.

**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 capacity as  
Liquidator of Reliance Insurance Company**

Dated: March 26, 2004

**VERIFICATION**

I, **ARTHUR W. MULLIN**, verify that: (1) I am President of Mullin Management Consultants, LLC and Special Asset Consultant for the Pennsylvania Insurance Department, Office of Liquidations, Rehabilitations and Special Funds; (2) I am authorized to take this verification on behalf of M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, in her official capacity as Liquidator of Reliance Insurance Company; (3) the facts set forth in the foregoing Petition for Approval of Sale of Virginia Tax Map 93, Parcel 13, Loudoun County, Virginia are true and correct to the best of my knowledge, information and belief.

I understand that the statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: March 26, 2004

Arthur W. Mullin  
**ARTHUR W. MULLIN**