

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

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 Tax Parcel 926500-0020-07, King County, Washington ("Petition") to TSS, LLC., 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 is hereby APPROVED; and the Liquidator is authorized to take any and all actions necessary to execute, deliver, perform, and consummate the Agreement of Sale and any related documents.

Hon. James Gardner Colins, President Judge

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DOCKET NO. 269 MD 2001

PETITION FOR APPROVAL OF SALE OF
TAX PARCEL 926500-0020-07, KING COUNTY, WASHINGTON

Petitioner M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania (the "Commissioner"), in her official capacity as Liquidator ("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 ("Agreement") between Reliance and TSS, LLC ("TSS, LLC"). Pursuant to the Agreement, if approved, Reliance intends to convey to TSS, LLC real property known as King County Tax Parcel 926500-0020-07, consisting of approximately 1.58 acres, and which is also known as Lot 2, West Campus Office Park (the "Property"). The Property is described below and in the Agreement. 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 its 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 King County, Washington, including the Property that is the subject of the Agreement.

4. The Property was purchased in 1993 as part of Reliance's acquisition of 5.73 acres for a purchase price approximating \$1.5 million, or \$6.00 per square foot. The property acquired was raw land.

5. A 1.43 acre portion of the acreage acquired in 1993, known as Tax Parcel No. 926500-0030-05, is the subject of a Petition filed with this Court on March 15, 2004 for a proposed sale price of \$410,000, or \$6.56 per square foot.

6. Reliance and TSS, LLC have completed their negotiations, and have executed the Agreement attached at Exhibit A.

7. GVA Kidder-Mathews (“Broker”) represented Reliance as its broker in connection with the marketing and sale of the Property. Western Commercial Real Estate is acting as a co-broker in this transaction under an agreement with TSS, LLC.

8. GVA Kidder Mathews has been actively engaged in marketing the Property and adjoining properties for the past three years. This is the second offer for the Property received by the Broker, and the first on which the parties were able to reach agreement.

SUMMARY OF THE TERMS OF THE AGREEMENT

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

10. Pursuant to Paragraph 3.1 of the Agreement, the purchase price to be paid for the Property by TSS, LLC is Four Hundred Fifty Thousand Dollars (\$450,000), or \$6.54 per square foot (“Purchase Price”).

11. Pursuant to Paragraph 3.1(a) of the Agreement, at the time the Agreement was signed, TSS, LLC paid into escrow an initial cash deposit of Ten Thousand Dollars (\$10,000), and also delivered a Note to the escrowee for an additional Ten Thousand Dollars (\$10,000).

12. Pursuant to Paragraph 5.1-5.4 of the Agreement, TSS, LLC has agreed to accept the property in an “as-is” condition.

13. Pursuant to Paragraph 14.1 of the Agreement, TSS, LLC has a "Purchaser Review Period" extending for ninety (90) days after it receives notice of Court approval of this Agreement, during which time it has the right to perform due diligence, terminate the Agreement and have its deposit refunded.

14. Pursuant to Paragraph 14.1 of the Agreement, the Purchaser Review Period can be extended an additional thirty (30) days upon the payment to Reliance of a Six Thousand Dollar (\$6,000), non-refundable fee for such extension. This fee is applicable to the Purchase Price if closing occurs.

15. Pursuant to Paragraph 9.2 of the Agreement, Reliance's closing expenses are limited to its cost of preparing the Deed, its payment of real estate transfer taxes, the costs of a standard owner's title insurance policy (customary in Washington state), half of any settlement escrow or closing fees, and its own attorneys' fees.

16. Pursuant to Paragraph 13.1 of the Agreement, Reliance is to pay GVA Kidder- Mathews a commission. GVA Kidder-Mathews is to pay any commission owed to Western Commercial Real Estate. The total commission is established by Reliance's brokerage agreement with Kidder-Mathews at 6%.

17. Based on the \$450,000 purchase price, the Broker's fee payable to GVA Kidder-Mathews by Reliance at closing would total approximately \$27,000.

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

18. 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.

19. The Liquidator believes that the purchase price represents fair value because it obtained the advice of Cushman & Wakefield's appraisal unit, which prepared an appraisal report dated March 24, 2003. Cushman & Wakefield determined that the combined value of the Property (identified therein as Parcel One), and a second 2.72 acre parcel, was One Million Two Hundred Thousand Dollars (\$1,200,000), or \$6.41 per square foot. A copy of this appraisal report is attached as Exhibit B.

20. 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).

21. The Liquidator's belief is based on the fact that the proposed sale price at \$6.54 per square foot exceeds the appraisal valuation of \$6.41 per square foot.

22. 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).

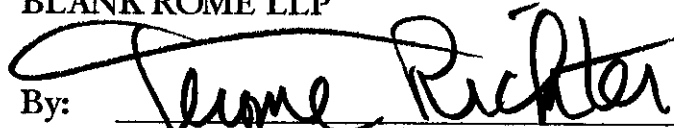
23. The Liquidator believes that TSS, LLC, which is a privately held company principally engaged in real estate development, is financially able to consummate this transaction. The principals of TSS, LLC have provided information to the Liquidator indicating that they have combined assets of over \$12 million, with a combined net worth of \$11 million. Columbia Private Banking, an affiliate of Columbia Bank in Bellevue, Washington has provided a letter dated March 23, 2004 stating that TSS, LLC has sufficient funds to consummate this transaction. A copy of this letter is attached as Exhibit C.

24. 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 31, 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 Tax Parcel 926500-0020-07, King County, Washington 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.



ARTHUR W. MULLIN

Dated: March 26, 2004