

Velva L. Price
District Clerk
Travis County
D-1-GN-16-000360
Ruben Tamez

CAUSE NO. D-1-GN-16-000360

THE STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

MILLENNIUM CLOSING SERVICES, LLC
d/b/a MILLENNIUM TITLE
Defendant

53RD
_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL AGREED PETITION,
APPLICATION FOR ORDER APPOINTING LIQUIDATOR
AND REQUEST FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the State of Texas, by and through the Office of the Attorney General of Texas (hereinafter “Plaintiff”), at the request of the Commissioner of Insurance for the State of Texas (hereinafter “Commissioner”), complaining of Millennium Closing Services, LLC d/b/a Millennium Title (hereinafter “Defendant”), Defendant agrees to the appointment of a liquidator and entry of injunction as specified below:

I. DISCOVERY LEVEL

1.1 Plaintiff intends to conduct discovery under Level 2 of the TRCP Rule 190.

II. NATURE OF SUIT

2.1 This suit is brought at the request of the Commissioner pursuant to Texas Insurance Code Chapter 443, the *Insurer Receivership Act*. Unless otherwise indicated, all statutory references are to the Insurer Receivership Act.

2.2 Plaintiff seeks to obtain an order designating the Commissioner as Liquidator of Defendant under TEX. INS. CODE, Section 443.151 *et seq.*

2.3 Plaintiff further seeks to obtain a Permanent Injunction pursuant to TEX. INS. CODE § 443.008(a), restraining Defendant from conducting the business of insurance, except as directed by the Liquidator, and restraining other parties from taking any actions against Defendant, its property, and its claimants.

2.4 Plaintiff further seeks to recover from Defendant all the fees, taxes, fines, penalties, and forfeitures provided by law for the acts complained of, including, but not limited to, all of the taxes, fines, penalties, and forfeitures provided by TEX. CONST. ART. IV, § 22.

2.5 Plaintiff further seeks to recover from Defendant all the fees, taxes, fines, penalties, and forfeitures provided by law for the acts complained of, including, but not limited to, all of the taxes, fines, penalties, and forfeitures, and reasonable attorneys' fees and court costs, subject to TEX. INS. CODE § 443.301.

III. DEFENDANT

3.1 Defendant is licensed as a title insurance agent as defined in TEX. INS. CODE § 2501.003. Defendant is a covered person as defined in TEX. INS. CODE § 443.003(4), as it has engaged in the business of title insurance as described in TEX. INS. CODE § 2501.005, and is subject to TEX. INS. CODE Chapter 443 as specified by TEX. INS. CODE § 2601.001.

3.2 Service of process on Defendant is waived and is being accepted by Millennium's counsel.

IV. JURISDICTION AND VENUE

4.1 This Court has jurisdiction over this action pursuant to TEX. CONST. art. IV, §22 and TEX. INS. CODE § 443.005.

4.2 This suit must be brought against Defendant in Travis County, Texas pursuant to TEX. INS. CODE §§ 443.005(g) and 443.051.

V. FACTS

5.1 Millennium Closing Services, LLC d/b/a Millennium Title is a limited liability company that is managed by its manager, MT&PS, LLC. MT&PS, LLC is a limited liability company that is currently managed by Shelby Carroll. Millennium Title has held a Texas title agent license since March 17, 2015. Its corporate offices are located at 771 E. Southlake Boulevard, Southlake, Texas 76092. On January 28, 2015, it filed an assumed name certificate to do business under the name Millennium Title.

5.2 On January 22, 2016, Millennium Title informed the department that it had over \$100,000 in accounts payable but less than \$10,000 in its operating account.

VI. GROUNDS FOR ORDER OF LIQUIDATION

6.1 The following grounds exist to place Defendant into liquidation pursuant to TEX. INS. CODE § 443.057:

- (a) as provided by TEX. INS. CODE § 443.057(2), Defendant is insolvent, as defined in TEX. INS. CODE § 443.004(a)(13). Defendant does not have assets at least equal to its liabilities, and
- (b) as provided by TEX. INS. CODE § 443.057(20), Defendant consents to liquidation.

6.2 Pursuant to TEX. INS. CODE § 443.058, if any of the grounds provided in § 443.057 are established, the court shall issue the order of liquidation requested in the petition.

VII. APPOINTMENT OF LIQUIDATOR

7.1 TEX. INS. CODE § 443.151(a) provides that the Court shall appoint the Commissioner as the Liquidator in a delinquency proceeding brought under TEX. INS. CODE § 443.057. TEX. INS. CODE § 443.151 *et seq.* Plaintiff requests that this Court issue an order appointing the Commissioner as Liquidator of Defendant, and grant him all powers under the statutes and the common law of the State of Texas, including, but not limited to, TEX. INS.

CODE § 443.151 *et seq.*, to conduct the business of the Defendant. Plaintiff further requests that the Liquidator not be required to file a bond as provided by TEX. INS. CODE § 443.008(m).

7.2 Plaintiff further requests that, pursuant to TEX. INS. CODE § 443.151(a), this Court issue an order finding that all of Defendant's property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in shared, escrow or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendant, and all licenses held by Defendant (collectively, "Defendant's Property"), be vested in the Liquidator.

7.3 Defendant is in possession of escrow accounts and records held in connection with title insurance policies issued by insurers. Administrative Rule D.1 of the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* adopted under 28 TEX. ADMIN. CODE § 9.1 provides for the transfer of funds held in escrow accounts and any related files to the appropriate insurers for the benefit of parties to pending transactions when a title agent ceases operations. Further, upon the designation of Defendant as an "impaired agent" as defined in TEX. INS. CODE § 2602.003, the Texas Title Insurance Guaranty Association ("Guaranty Association") is responsible for paying claims resulting from a shortage of funds in an escrow account to the extent provided in TEX. INS. CODE Chapter 2602. Plaintiff requests that this Court enter orders under TEX. INS. CODE § 443.008(a) to effectuate these requirements, including an order finding that such escrow accounts are not general assets of Defendant as defined in TEX. INS. CODE § 443.004(a)(9).

7.4 The Liquidator is vested with all the rights of an entity in receivership pursuant to TEX. INS. CODE § 443.154(w), including the right to exercise legal remedies available to Defendant. Plaintiff requests that this Court issue an order finding that the Liquidator has exclusive authority to exercise any rights available to Defendant to exercise legal remedies.

VIII. STAY OF PROCEEDINGS

8.1 Pursuant to TEX. INS. CODE § 443.008(c), the commencement of this proceeding operates as a stay against the commencement or continuation of a judicial, administrative, or other action or proceeding or process against Defendant or its property. Further, pursuant to TEX. INS. CODE § 443.008(d), the commencement of this proceeding operates as a stay with respect to certain actions against insureds of Defendant for 90 days after the date of the order appointing the Liquidator, or such further time ordered by this Court. Plaintiff requests that this Court enter any additional stays under TEX. INS. CODE § 443.008(a) as may be necessary.

IX. INJUNCTIVE RELIEF

9.1 This Court may grant injunctive relief as necessary or appropriate to carry out the provisions of the Insurer Receivership Act pursuant to TEX. INS. CODE § 443.008(a). Plaintiff requests that this Court enter a Permanent Injunction as set forth herein pursuant to TEX. INS. CODE § 443.008(a) to prevent immediate and irreparable injury, loss and damage to the State of Texas, the general public, and Defendant's creditors.

9.2 Plaintiff would show that, unless restrained by this Court, Defendant will continue to operate in a hazardous financial condition. Plaintiff therefore requests that this Court enter an order enjoining Defendant's current and former officers, directors, underwriters, managers and employees (including, but not limited to, Nancy Jackson Carroll and Shelby Carroll); owners and affiliates (including, but not limited to, Nancy Jackson Carroll, Shelby Carroll, and NJC Carroll Law, PLLC), local recording agents, managing general agents, agents, third party administrators,

representatives, associates, servants, adjusters, attorneys and accountants (including, but not limited to, those acting in concert with them) from conducting business on behalf of Defendant, except as directed by the Liquidator, and from wasting, transferring, selling, assigning, canceling, concealing, claiming, hypothecating or disposing of, in any manner, any of Defendant's property. Plaintiff further requests that this Court order Defendant and Defendant's agents to cooperate with the Liquidator as required by TEX. INS. CODE § 443.010.

9.3 Plaintiff would further show that all financial institutions and depositories (including, but not limited to, Independent Bank, formerly known as Grand Bank, and Prosperity Bank) and any other parties that receive actual notice should be restrained from taking unauthorized actions in connection with Defendant's property. Plaintiff therefore requests that this Court issue an order pursuant to TEX. INS. CODE § 443.008(a) enjoining any parties from releasing, transferring, concealing, withdrawing, allowing to be withdrawn, or affecting, in any manner, any of Defendant's property, as further described herein, or other asset to the credit of Defendant on deposit with them or in their possession, except as authorized by the Liquidator or his designees, and that such parties be ordered to produce and deliver to the Liquidator or his designees such assets, money, deposits, or other items they have in their custody.

9.4 Plaintiff would further show that in order to avoid the dissipation or loss of Defendant's assets or records, and prevent any creditors or claimants from obtaining any preferences in violation of the Insurer Receivership Act, an injunction should be issued against any and all parties asserting claims or causes of action of any kind against Defendant. Plaintiff therefore requests that this Court enjoin any parties from commencing or prosecuting any action against the Liquidator or Defendant, including, but not limited to, arbitration, administrative proceedings, lawsuits or appeals, and from obtaining any preference, judgment, attachment, garnishment, lien or levy against the Liquidator, Defendant or Defendant's property, except by

doing so as permitted by the Insurer Receivership Act. Plaintiff further requests that this Court order that the United States Postmaster deliver to the Liquidator any items addressed to Defendant.

X. OTHER RELIEF

10.1 Plaintiff requests that this Court award the Office of the Attorney General all costs incurred in this proceeding, including, but not limited to, reasonable attorneys' fees, investigative costs, and court costs. The payment of such amounts shall be subject to the provisions of TEX. INS. CODE Chapter 443.

10.2 TEX. INS. CODE § 443.001(b) provides that the Insurer Receivership Act may not be interpreted to limit the powers granted to the Commissioner under other provisions of law. Plaintiff requests that this Court find that an order granting relief requested in this petition shall not be construed as a limitation of the Commissioner's powers granted under such provisions.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays:

1. that the Court grant the Application and the relief requested;
2. that this court enter a Permanent Injunction enjoining Defendant and Defendant's agents, financial institutions and depositories, and all other persons from taking any action in connection with Defendant's business and property, except as directed by the Liquidator, and from taking any action against Defendant or the Liquidator, except as permitted by the Insurer Receivership Act;
3. that the Court immediately appoint the Commissioner as Liquidator to conduct Defendant's business and take charge of Defendant's property as described herein, and that the Liquidator be given all equitable powers under the statute and the common law of the State of Texas that authorize the appointment of a receiver;
4. that the Court vest the Liquidator with title to Defendant's property;

5. that the Office of the Attorney General be awarded all costs incurred in this proceeding, including but not limited to reasonable attorneys' fees, investigative costs, and court costs, subject to the provisions of TEX. INS. CODE Chapter 443;

6. that no bond be required of the Commissioner or the Liquidator; and

7. for any and further relief, both general and specific, in law and in equity, to which the Plaintiff may be entitled.

Respectfully submitted,

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Attorney General of Texas

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First Assistant Attorney General

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AFFIDAVIT

STATE OF TEXAS

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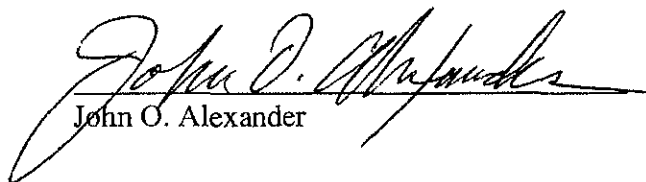
COUNTY OF TRAVIS

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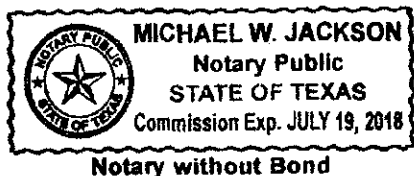
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BEFORE ME, the undersigned authority, on this day personally appeared John O. Alexander, the Director of Supervisory Interventions for the Texas Department of Insurance, who, after by me being duly sworn, upon oath deposed and said:

“I am over the age of eighteen, have never been convicted of a felony, and am competent to make this affidavit. I am the Director of Supervisory Interventions for the Texas Department of Insurance. I have carefully read the allegations contained in the foregoing *Plaintiff's Original Petition, Application for Order Appointing Liquidator and Request for Injunctive Relief*, and state that each and every one of the allegations of facts is true and correct, and is made on my personal knowledge.”


John O. Alexander

SUBSCRIBED AND SWORN to before me this the 25 day of January, 2016 to certify which, witness my hand and seal of office.




M. JACKSON
Notary Public in and for the
State of Texas