

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FRANK P. WOLYNIEC, JR., and :
ALLENWOOD EQUIPMENT, :
Plaintiffs : **No. 03-00071**
 :
vs. : **CIVIL ACTION – LAW**
 :
 :
JAMES T. WOLYNIEC, SR., and :
WOLYNIEC CONSTRUCTION, INC., : **Non-jury Verdict**
Defendant :

VERDICT

AND NOW, this ___ day of September 2007, after a non-jury trial in the above-captioned matter, it is ORDERED and DIRECTED as follows:

1. The Court finds in favor of Plaintiffs and against Defendants with respect to the PALIC/Aetna annuity contract number 28848 issued on January 8, 1970. If no post trial motions are filed, Plaintiffs shall pay Defendants the sum of \$3,440 within twenty (20) days of the date of this Order to reimburse Defendants for the monthly premiums from July 2000 through the present. Defendants shall transfer this annuity contract to Plaintiffs within thirty (30) days thereafter.

2. The Court finds in favor of Defendants and against Plaintiffs with respect to the remaining three (3) life insurance policies.

The Court accepts the credibility of Defendant James Wolyniec that the three life insurance policies were discussed during the negotiations leading up to the stock redemption agreement. He testified that there was a difference in value between Wolyniec Construction and Allenwood Equipment, and during the negotiations he sought approximately \$250,000 which represented one-half the difference in value. He testified

that, in response, Plaintiff Frank Wolyniec sought these life insurance policies. This testimony is supported somewhat by the deposition testimony of attorney Michael Casale, the drafter of the stock redemption agreement. Although Mr. Casale was not aware of the various life insurance policies, he did recall that prior to the agreement being prepared there were issues over the balance sheets because they were not equal. Exhibit 8, right hand page numbers 7-8, 14. Defendants ceased billing Plaintiffs for these policies after the stock redemption agreement was signed. No testimony was presented to show that Plaintiffs raised an issue about these life insurance policies prior to the filing of this lawsuit in 2003. The Court finds based on the testimony of James Wolyniec and the subsequent conduct of the parties that both parties agreed and understood that these life insurance policies were assets of Wolyniec Construction and Plaintiffs relinquished any right to these policies when Plaintiff Frank Wolyniec transferred his shares to Wolyniec Construction pursuant to the stock redemption agreement.

The Court, however, does not find credible James Wolyniec's explanation regarding the continued billing of the annuity contract premiums. The billing continued for over three years. James Wolyniec testified that after he signed the stock redemption agreement he went back to his office and, when asked how he made out, he told his female office manager he got the life insurance policies. If the annuity contract was part of his negotiations with Plaintiffs regarding the life insurance policies and he believed he received the life insurance policies pursuant to the stock redemption agreement, he would not have told the girls to continue billing Allenwood Equipment for the \$40 monthly premiums for the annuity contract through June 2000 as evidenced by Plaintiff's Exhibit 2. Based on the testimony of Plaintiff Frank Wolyniec and the conduct of the parties after the date of the

stock redemption agreement, the Court finds in favor of Plaintiffs with respect to the annuity contract issued January 8, 1970.

By The Court,

Kenneth D. Brown,
President Judge

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