

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PENNLICO, LTD.,	:	NO. 12 – 02,326
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
	:	
INTERNATIONAL DEVELOPMENT CORPORATION,	:	
Defendant	:	Preliminary Objections

**OPINION AND ORDER**

Before the court are preliminary objections filed by Defendant on December 27, 2012. Argument on the objections was heard February 14, 2013.

Plaintiff has brought the instant action based on a transfer of certain mineral rights from its former tenant in common (with respect to those rights) to Defendant. According to the Complaint, transfer of the rights was subject to a right of first refusal and since the transfer took place without notice to Plaintiff and the opportunity for Plaintiff to purchase the rights, such violated the right of first refusal. Plaintiff seeks specific performance of the right of first refusal, imposition of a constructive trust on the mineral rights, an accounting of any profits resulting from ownership of the rights since the transfer, and damages for breach of the right of first refusal. In its preliminary objections, Defendant raises six issues. These will be addressed in turn.

First, Defendant contends Plaintiff will be unable to prove a “purchase price” as the only evidence of value set forth in the Complaint is a Realty Transfer Tax Statement of Value filed by Defendant, and further, that the Complaint acknowledges that the transfer was part of a settlement and discontinuance of various claims<sup>1</sup>, and that such settlement has an uncertain value. The latter contention is of no moment; in Boyd & Mahoney v. Chevron U.S.A., 614 A.2d 1191 (Pa. Super. 1992), the Superior Court allowed as evidence of value a Realty Transfer Tax Statement of Value in a similar situation: there were multiple parcels of land

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<sup>1</sup> According to the Complaint, in 1997 the principal shareholder of Defendant IDC filed suit against the widow of Clarence Moore, whose estate owned certain mineral rights as tenant in common with Plaintiff. Two additional claims were filed in 1999; all three of these claims were settled by way of an agreement which envisioned transfer from the estate to IDC of eight deeds, including the deed to the mineral rights at issue here.

involved and no specific value assigned to any of them in the transfer itself. In the instant case, although the settlement involved the transfer of eight separate deeds and no allocation of the consideration for any of them, the Statement of Value filed by Defendant sufficiently establishes a “price” such as is necessary to enforce the right of first refusal. This objection will therefore be overruled.

Next, Defendant contends it is entitled to a demurrer as the Complaint does not establish that Plaintiff’s predecessor-in-interest believed to the requisite degree of certainty that the right of first refusal pertained. Defendant bases this argument on language in the settlement agreement between Defendant and the Moore Estate that the right of first refusal “may or may not affect the properties”. The court is aware of nothing that requires a party to establish his predecessor-in-interest’s firm belief in a cause before that cause may form the basis for a lawsuit brought by a successor-in-interest. This objection will therefore be overruled.

Next, Defendant contends the right of first refusal is not enforceable as it does not contain a description “of how or in what order various parties can each be given the same right to elect purchase of the same property on the same terms”, and does not state that the right is to be “passed down to assigns”. The court agrees with Plaintiff, however, that the right of first refusal *does* provide a mechanism by which several parties can exercise their simultaneous right to purchase, and *does* provide that the right itself (and not just the consequence of any exercise of that right by the original holder of such) is binding on successors and assigns. This objection will therefore also be overruled.

Next, Defendant contends the right of first refusal is not enforceable as one of the parties thereto is alleged to be bound by an “attorney in fact” but there is no public record of that person having been granted power of attorney by the named contracting party. While the recording of powers of attorney is permissible, it is not required. 21 P.S. Section 384. Therefore, the lack of a public record of the granting of the power of attorney is not fatal to the case and this objection will also be overruled.

Next, Defendant contends Plaintiff is not entitled to relief as it has failed to support its allegation of ownership with factual allegations. In response, Plaintiff argues that its ownership is a matter of public record by virtue of deeds recorded in the Office of the Register and

Recorder, and that the court can take judicial notice of such deeds. As Plaintiff has alleged ownership, at this stage nothing further is required. This objection will be overruled.

Finally, Defendant contends that Plaintiff's allegation that "[a]t all times relevant hereto", Plaintiff owned mineral rights as a tenant-in-common with the Moore Estate, is insufficiently specific to allow it to defend. The Complaint makes it clear, however, that the time period referenced is that during which Defendant accepted transfer of the deed in question from the Moore Estate without prior notice having been given to Plaintiff so that Plaintiff could choose whether or not to exercise its right of first refusal. This objection will therefore also be overruled.

**ORDER**

AND NOW, this 15<sup>th</sup> day of February 2013, for the foregoing reasons, the preliminary objections are hereby overruled. Defendant shall file an Answer within twenty (20) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

cc: J. David Smith, Esq.  
Marc S. Drier, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson