IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

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PENNLYCO, LTD., Plaintiff vs. SOUTHWESTERN ENERGY PRODUCTION COMPANY, Defendant	: : : : : : :	NO. 12 – 02,428 CIVIL ACTION - LAW

OPINION IN SUPPORT OF ORDER OF APRIL 8, 2014, IN COMPLIANCE WITH RULE 1925(A) OF THE RULES OF APPELLATE PROCEDURE

Plaintiff has appealed this court's Order of April 8, 2014, which denied the motions for summary judgment filed by Plaintiff and granted the motions for summary judgment filed by Defendants. The court held that Plaintiff's claim for specific performance under a right of first refusal was barred by the applicable statute of limitations. In its Statement of Issues on Appeal, filed May 27, 2104, Plaintiff asserts the court made nineteen (19) errors in so holding. The court believes that the several issues about which Plaintiff complains in sixteen (16) of the points have been sufficiently addressed in the Opinion issued in support of the April 8, 2014, Order, and thus these will not be addressed further. The remaining three points warrant comment.

In Point number 6, Plaintiff alleges error in the court "determining that Pennlyco was not justified in its belief that the price associated with the Lycoming Mineral Property was $550,000." The court wishes to point out that it did not so determine. In fact, the court stated that "IDC may be able to show that the property was indeed worth $550,000 at the time of transfer", thus implying that Pennlyco may have been justified in its belief. If Plaintiff meant by that assertion of error to convey the concept raised in the following point, number 7, that the court erred in concluding that Pennlyco's mistaken belief about the "price" did not toll the , as was stated in the Opinion of April 8, 2014, first, whether the belief was "mistaken" has not been established and, second, lack of knowledge, mistake or misunderstanding do not toll the statute in the absence of a reasonable investigation into the matter.

In Point number 12, Plaintiff alleges error in the court "assuming IDC may be able to show that the property was indeed worth $550,000 at the time of transfer". By stating that IDC "*may be able* to show" a $550,000 value, the court was obviously speculating as to what the evidence might be, in support of the notion that Plaintiff's belief may not have been mistaken. The court thus interprets Point number 12 to assert that the court erred in assuming IDC *would be able* to show the $550,000 value. That is not what was stated, however.

Finally, in Point number 15, Plaintiff alleges error in the court "determining that Pennlyco *should have known* that a wrong had been committed before the deed was recorded". The court wishes to clarify that its determination actually was that Pennlyco *did know* that a wrong had been committed when it became aware of the transfer and was cognizant of the fact that no notice or opportunity to exercise the right of first refusal had been provided. To the extent

that Plaintiff is by this point arguing that the wrong was not committed until the Deed (and accompanying Statement of Value) was recorded, the court believes it has sufficiently addressed the argument. Since this is really the only issue, however, the court wishes to make the following point: The court agrees with Plaintiff that "[o]nce the holder of a right of first refusal receives notice of a third party's offer with price and terms, the right of first refusal is transformed into an option."[1] That is not inconsistent, however, with the requirement that a "party asserting a cause of action … use all reasonable diligence to properly inform himself of the facts and circumstances upon which the right of recovery is based". Weik v. Brown, 794 A.2d 907, 909 (Pa. Super. 2002), quoting and/or citing Cappelli v. York Operating, Inc., 711 A.2d 481, 484-85 (Pa.Super. 1998). "The limitations period begins to run when the injured party possesses *sufficient* critical facts to put him on notice that a wrong has been committed and *that he need investigate* to determine whether he is entitled to redress." Id. Notice of the intended transfer provided Plaintiff with sufficient critical facts that a wrong was being committed;[2] it needed to investigate to determine the price in order to decide whether to pursue enforcement of its right of first refusal.[3] Had a diligent investigation been made and Plaintiff was still unable to determine the price, it could have filed the instant suit at that point and asked the court to determine the price, as has been done in other cases where a property was sold as part of a package. Plaintiff may not simply sit back and allow third parties to change their

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1 Gleason v. Norwest Mortgage, Inc., 243 F.3d 130, 139 (3d Cir. 2001), cited in Plaintiff's Brief in Opposition to International Development Corporation's Motion for Summary Judgment, page 9.

2 By this statement the court does not imply that a wrong actually was committed as it is not addressing the remaining allegations, that the right of first refusal did not apply to this transfer, or was not enforceable for various reasons.

3 In fact, Plaintiff's principal testified that he assumed the "price" was $550,000 and that he considered the matter, but did not want the property at that price. He did not say that he did not know the price and was therefore unable to decide what to do.

position in reliance on the transfer, waiting for what could have been an indefinite period of time, for the "price" to somehow reveal itself.

Dated: May 29, 2014

Respectfully submitted,

Dudley N. Anderson, Judge

cc: J. David Smith, Esq.
Marc S. Drier, Esq.
Jeffrey Malak, Esq., Chariton, Schwager & Malak
138 South Main Street, Wilkes-Barre, PA 18703
Gary Weber, Esq.
Hon. Dudley Anderson