

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 2
NASSAU COUNTY

Application of NICOLE BANANI, as
Administratrix of the Estate of RAJESH
BANANI, deceased,

INDEX No. 007728/10

MOTION DATE: June 11, 2010
Motion Sequence # 001

for the Judicial Dissolution of

NEW MILLENNIUM PAWNBROKERS, INC.

The following papers read on this motion:

Order to Show Cause..... X
Affidavit/Brief in Opposition..... XX

This is a special proceeding for the judicial dissolution of a corporation pursuant to § 1104-a of the Business Corporation Law. Petitioner Nicole Banani is the administrator of the estate of her husband Rajesh Banani, who died on February 17, 2007. At the time of his death, Rajesh owned 25% of the stock of New Millenium Pawnbrokers, Inc. The corporation operates a pawn brokerage business in Astoria. The other 75% of the stock is owned by Rajesh 's parents, Kishin and Pushpa Banani. Since Rajesh's death, the business has been operated by Kishin and Pushpa.

Petitioner alleges that in May 2008 Kishin and Pushpa sold the assets of New Millenium to Modell Cash Loans, LLC for \$1,063,218. Petitioner alleges that she was not given notice of the proposed sale and it was not submitted to a vote of the shareholders. Petitioner further alleges that Kishin and Pushpa have failed to account to

her for her share of the proceeds of the sale as well as the profits of the corporation. Petitioner moves for an order judicially dissolving the corporation on the ground of oppressive conduct toward the minority shareholder and looting and wasting the assets of the corporation. Petitioner requests that the valuation of the stock of Kishin and Pushpa be adjusted based upon their wilful or reckless conduct and that a receiver be appointed pending the dissolution of the corporation.

In opposition to the petition, Kishin alleges that Rajesh executed an interest-free promissory note payable to Kishin and Pushpa as consideration for his shares in the corporation. Kishin further alleges that Rajesh's estate is liable to Kishin and Pushpa for an additional \$225,780 in loans which they satisfied on his behalf. Kishin alleges that he obtained the "highest possible price" for Millenium's assets. Kishin argues that because the amount the estate owes him exceeds the value of petitioner's stock, dissolution is unnecessary and petitioner is not entitled to an accounting.

Business Corporation Law § 1104-a provides that the holders of 20% or more of the stock of a corporation may petition for dissolution upon the ground that the directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions toward the complaining shareholders. The corporation may also be dissolved on the ground that the property or assets of the corporation are being looted, wasted, or diverted for non-corporate purposes. In determining whether to proceed with involuntary dissolution, the court shall consider whether liquidation is the only feasible means by which petitioners may reasonably expect to obtain a fair return on their investment (Bus Corp Law § 1104-a[b]). The court must also consider whether liquidation is reasonably necessary for the protection of the rights and interests of petitioners. The court may order that stock valuations be adjusted and provide for a surcharge upon the directors upon a finding of wilful or reckless dissipation of assets without just or adequate compensation therefor.

Oppression arises only where the majority conduct substantially defeats petitioner's reasonable expectations that were central to his decision to join the venture (**Brickman v Brickman Estate at the Point**, 253 AD2d 812 [2d Dept 1998]). Thus, failure to regularly account concerning corporate operations, laxness in maintaining records, and failure to allow access to corporate records may be insufficient to establish "oppression" (Id). In view of petitioner's failure to have been involved in the business before her husband's demise, there is no evidence that her expectations have been frustrated. Thus, the court cannot conclude that there has been oppression. Because there

is no evidence that the amount received for the sale of assets was inadequate, the court cannot conclude that there has been looting or wasting of the assets of the corporation. Thus, petitioner has not established grounds for the judicial dissolution of the corporation.

However, pursuant to Bus.Corp. Law § 910, petitioner had the right to payment of fair value for her shares upon the sale of the corporation's assets, unless notice of the proposed action was given and petitioner failed to file an objection. The procedure to enforce petitioner's right to receive payment for her shares is set forth in BCL § 623. While Kishin claims that the interest-free note was the consideration for petitioner's stock, the stock may have been a gift and the note void for lack of consideration. Moreover, Kishin and Pushpa's payment of Rajesh's loans may have been gifts to their son rather than legally enforceable obligations. In any event, upon the appraisal of petitioner's shares, the estate may be entitled to an affirmative recovery.

Accordingly, petitioner's motion for an order judicially dissolving New Millenium is **denied**. However, petitioner is granted leave to serve an amended petition seeking payment of fair value for her shares in the corporation.

So ordered.

Dated AUG 16 2010


J.S.C.

ENTERED

AUG 19 2010

NASSAU COUNTY
COUNTY CLERK'S OFFICE