

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

In the Matter of the Application of
NICOLE BANANI, as Administratrix of the
Estate of RAJESH BANANI, a deceased
shareholder of NEW MILLENNIUM
PAWNBROKERS, INC., a New York
Corporation,

INDEX No. 007728/10

MOTION DATE: June 20, 2012
Motion Sequence # 004

Petitioner,

For the Determination of the value of stock
held by RAJESH BANANI,

The following papers read on this motion:

Notice of Motion..... X
Affirmation in Opposition..... X
Reply Affirmation..... X

Motion by petitioner Nicole Banani to strike respondent New Millennium Pawnbrokers, Inc.'s answer for failure to provide discovery is **denied**.

This is a special proceeding to enforce a shareholder's right to receive payment for shares pursuant to § 623 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 Millennium Pawnbrokers, Inc. The other 75% of the stock is owned by Rajesh's parents, respondents Kishin and Pushpa Banani. New Millennium operated a pawn brokerage business in Astoria. Pursuant to a contract dated December 24, 2007, New Millennium sold its assets to Modell Cash Loans, LLC for \$1,063,218, allegedly in an arm's length transaction.

Petitioner originally sought judicial dissolution of New Millennium on the ground of oppressive conduct toward a minority shareholder and looting of corporate assets pursuant to § 1104-a of the Business Corporation Law. By order dated August 16, 2010, the court denied the petition for judicial dissolution but granted petitioner leave to serve an amended petition seeking payment of fair value for her shares. On August 23, 2010, petitioner served a “notice of dissent” to the sale of assets which had occurred in December 2007. Thus, petitioner appears to claim New Millennium did not receive fair consideration for its assets and petitioner is entitled to more than 25 % of the sales price for her shares.

By order dated January 13, 2011, the court directed respondents to provide discovery of the books and records of New Millennium from three years before Rajesh’s death through the date of the sale of assets, i.e. for the years 2004, 2005, 2006, and 2007. It also appears that petitioner, who is Rajesh’s administrator, has obtained extensive discovery as to the value of New Millennium within the context of a Surrogate’s Court proceeding.

Accordingly, petitioner’s motion to strike respondent New Millennium Pawnbrokers’ answer is **denied**. The depositions of the parties shall be conducted by August 30, 2012, or will be deemed waived. Counsel are reminded of the final certification conference scheduled for September 21, 2012.

So ordered.

Dated **JUL 31 2012**


J.S.C.

ENTERED
AUG 02 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE