

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

**HON. STEPHEN A. BUCARIA**

Justice

TRIAL/IAS, PART 1  
NASSAU COUNTY

INDEX No. 007728/10

MOTION DATE: Oct. 16, 2013  
Motion Sequence # 005

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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,

Petitioner,

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

-against-

KISHIN BANANI and PUSHPA BANANI,

Respondents.

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The following papers read on this motion:

Notice of Motion..... X  
Affirmation in Support..... X

Motion by petitioner Nicole Banani to preclude respondents from offering evidence as to the value of respondent New Millennium Pawnbrokers, Inc. is **granted** to the extent indicated below.

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 was 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. At his deposition, Kishin testified that he sold the business to the person who offered "the highest price" (Ex 7 at 48). Thus, the sale to Modell Cash Loans appears to have been 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.

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.

By notice of motion dated August 10, 2013, petitioner moves to preclude respondents from offering evidence as to liabilities of New Millennium Pawnbrokers, gross and net sales, and the value of the corporation. Petitioner argues that an arm's length sale is the best method for determining the value of a close corporation. There is no opposition to the motion.

When a corporation elects to buy out a minority shareholder at fair value, the issue is what a willing purchaser in an arm's length transaction would offer for the shareholder's interest in the company as an operating business (*Murphy v U.S. Dredging Corp.*, 74 AD3d 815 [2d Dept 2010]). Modell appears to have purchased New Millennium's assets in an arm's length transaction. The assets appear to have been purchased in order to continue operating the pawn broker business as a going concern. The court concludes that respondents should be precluded from challenging the amount received in the sale of New Millennium's assets to Modell as the best evidence of the value of the company.

**BANANI v BANANI**

**Index no. 007728/10**

Accordingly, petitioner's motion to preclude respondents from offering evidence as to the liabilities of New Millennium Pawnbrokers, gross and net sales, and the value of the corporation is **granted**.

Counsel are reminded of the pretrial conference scheduled for November 22, 2013.

So ordered.

Dated NOV 06 2013

  
J.S.C.

**ENTERED**  
NOV 08 2013  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE