

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

Present: **HON. EMILY PINES**
 J. S. C.

Original Motion Date: 10-29-2008
 Motion Submit Date: 06-24-2009
 Motion Sequence No's.: 008 MOTD

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**GLORIA DEMATTEO , as Executrix of
 the ESTATE OF EDWARD DEMATTEO,**

Plaintiff,

-against-

**DEMATTEO SALVAGE CO., INC. and E
 & J HOLDING CORP.,**

Defendants.

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Attorney for Plaintiff

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Attorney for Defendant

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In this action commenced by the Executrix of the Estate of a shareholder of two corporations involved in the recycling business, the Plaintiff seeks, inter alia, specific performance of the provisions of two stockholder agreements, which were amended by the four shareholders of the interrelated corporations from time to time. At issue after over six years of litigation is the value of the corporations' stock that belonged to the Plaintiff's decedent, 25% shareholder, Edward DeMatteo. The parties have been litigating for years over the issue of whether the shares should be valued based on a 1981 Amendment to the original 1966 shareholder's agreement or based on several later amendments through 1992, which may or may not have occurred. The 1966 Shareholder's Agreements set forth a procedure to be followed for revaluing stock and the parties continue to dispute whether certain post 1981 resolutions do or do not comply with the Agreements' directives.

However, it appears that following the death of the eldest shareholder (brother), the remaining shareholders of the two corporations all met in 2000, after settling a

litigation in which they were forced to borrow funds to make payment to that brother's estate. The April 25, 2000 meeting culminated in a resolution stating that:

"RESOLVED, that the values for the shares of stock in both corporations were voluntarily canceled at their present value."

Such resolution provided, further, that:

"Paul Iadanza at the office of Delle Fave & Tarasco, has been retained to value both corporations, E& J Holding Corporation and Dematteo Salvage Co., Inc."

Following a second Summary Judgment made on behalf of the Defendants, this Court set down for a framed issue hearing the question of the parties' intent in meeting and enacting the April 25, 2000 resolution. This hearing took place on June 24, 2009. The remaining two shareholders of both corporations as well as their sister, Amalia DeMatteo Donvio, all testified. The Court had an opportunity to view the witnesses and adjudge their credibility.

All three witnesses were united in setting forth that Edward Dematteo drafted and presented the subject resolution; that they read it before it was signed and that it was signed (by the three remaining shareholders) for the same single purpose. The remaining shareholders did not wish to be placed in a position, upon the inevitable death of the next shareholder, of being required to pay out a large amount of cash based on their previous in-house valuations of their shares. Edward Dematteo, the brother who handled the office affairs of the corporation, specifically chose the corporations' accountant to perform new valuations and all other shareholders agreed to accept the valuation as found by Mr. Iadanza. That is clearly the testimony, found credible by this Court, of all three witnesses. In addition, all three witnesses admitted that any prior valuations, whether in 1966, 1981 or 1992 (about which there has been years of litigation) were canceled and null and void.

However, the witnesses also all agreed that Mr. Iadanza, although retained in April 2000, had not performed such evaluation by the time of the death of the next shareholder, Edward Dematteo, in 2002. While they all stated that such evaluation was completed after his death, they do not give a rational explanation as to why such was not completed during the two year period after Mr. Iadanza's retention.

It is clear to the Court, based on the testimony of the parties and their stated purpose for the April 25, 2000 meeting that they deliberately chose to cancel any valuation of their shares in the two corporations that had been agreed to among them prior to that date. It is also clear that they agreed to accept the valuation performed by their corporate accountant who this Court finds, based upon their credible testimony, was selected by Edward Dematteo. It is also clear to the Court that, as Mr. Iadanza was retained in April 2000 to perform such evaluation that the intent of the shareholders of both corporations was to accept a valuation as of that period. While Plaintiff's counsel has suggested that the Iadanza evaluation that was in fact performed should not be accepted as it was lower than the one set forth by the shareholder's themselves in 1981, clearly that was part of their purpose in enacting the 2000 resolution; i.e., for the valuation to reflect a number which would not place the corporations in extremis when the estate of the next shareholder was entitled to payment. They made the decision consciously with the imprimatur of the Plaintiff's decedent who chose the evaluator.


It is the Court's understanding that although Mr. Iadanza performed an evaluation several years later, he has not, as of this date, valued the shares of the two subject corporations as of April 2000, the date of the agreement among the shareholders as evidenced by their resolution and explained more fully by their testimony.

Accordingly, the Defendants' motion for Summary Judgment is granted in part, to the extent the Court finds that the three shareholders of the Defendant corporations agreed on April 25, 2000 to retain their corporate accountant, Paul Iadanza, to value the corporations as of that period and likewise agreed to accept such valuation. To the extent that such has not been accomplished, this court holds that it should be completed and submitted to the Court for a final disposition of this matter.

Counsel for all parties are directed to appear in this part for a final conference on Tuesday, August 11, 2009, at 11 a.m.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: July 2, 2009
Riverhead, New York



EMILY PINES
J. S. C.