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SHORT FORM ORDER

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

**HON. IRA B. WARSHAWSKY,
Justice.**

TRIAL/IAS PART 12

In the Matter of the Application of JAMAICA
ACQUISITION, INC., successor by merger of
Jamaica Central Railways, Inc.,

Petitioner,

INDEX NO.: 009278/2007
MOTION DATE: 10/05/2007
MOTION SEQUENCE: 001 and
002

-against-

SYLVIA EISENBERG, CARIN ROSE GILBERT,
JAMES MOLLE, MELVIN SMITH and
ROSEMARY PAVLICK,

Respondents.

To Determine the Fair Value, pursuant to New York
Business Corporation Law § 623, of certain Shares
of Common Stock of Jamaica Central Railways, Inc.

The following papers read on this motion:

Notice of Petition, Verified Petition & Exhibits Annexed.....	1
Notice of Motion, Affirmation & Exhibits Annexed.....	2
Memorandum of Law in Support of Respondents' Motions for Pretrial Discovery and Consolidation.....	3
Affidavit in Opposition to Motion for Pretrial Discovery and Consolidation of Douglas J. Good, Esq. & Exhibits Annexed.....	4
Reply Memorandum of Law in Further Support of Respondents' Motion for Discovery and Consolidation.....	5
Reply Affirmation in Support of Respondents' Motion for Discovery and Consolidation.....	6

This petition by petitioner, Jamaica Acquisition, Inc., for an order pursuant to B.C.L. § 623 determining the fair value of the shares in Jamaica Central Railways, Inc., formerly held by respondents, and the motion by respondents for an order pursuant to B.C.L. § 623(h)(4) and CPLR § 602(a) granting leave to obtain discovery of documents pertaining to the valuation of respondents' stock, and to conduct depositions of the valuation experts, officers, directors or agents of GTJ REIT, Inc. and the Jamaica Central Railways, Inc., and for consolidation of the above captioned action with the valuation petitions brought by Triboro Acquisition, Inc. (Index No. 009283/2007) and Green Acquisition, Inc. (Index No. 009279/2007) are decided as follows.

Respondents are former minority shareholders of Jamaica Central Railways, Inc., a closely held corporation. Jamaica Central Railways, Inc. merged with and into petitioner Jamaica Acquisition, Inc. on March 29, 2007. Jamaica Acquisition, Inc. is a wholly owned subsidiary of GTJ REIT.

The respondents filed a dissent to the merger and a demand for payment of the fair value of their stock. Respondent Smith owns 102 shares, the others each have 34. They were offered, post merger, \$7.00 a share which offer they rejected.

Pursuant to section 623 of the Business Corporation Law, petitioner was required to value the stock of Jamaica Central Railways, Inc., including the effects of the merger, and to pay respondents the fair value of their stock which would have been exchanged, had they assented to the plan of merger.

Petitioner asserts that the fair value of respondents' shares of Jamaica Central Railways, Inc. stock has been fixed at fair value including any appreciation directly or indirectly resulting from the adoption of the Merger Agreement and Plan of Merger. Petitioner avers that the stock was valued on the advice of an independent, reputable advisor expert in the valuation of common stock and that said advisor took into consideration (1) that REIT tax status had been achieved by GTJ REIT; (2) that GTJ REIT would distribute substantially all of GTJ REIT's taxable income to its shareholders; (3) that the operations of GTJ be compared to other commercial REITS; (4) that there be

no minority discount; and (5) that such determination of fair valuation be made in accordance with New York law. Petitioner submits that their good faith offer is fair value of the shares of respondents' and should be declared so by the court.

Respondents move for discovery of the documents and information considered in reaching the valuation of their shares of stock in Jamaica Central Railways, Inc. and then to hold depositions of the valuers or persons having information about the valuation. They argue that the valuation offered was equal to 40% of their proportionate interests in the collective net asset value of the pre-merger companies. Moreover, that the offering price did not comport with the requirement of B.C.L. § 623(h)(4) that the fair value of the shares be as of the close of business of the date prior to the effectuation of the merger to which the respondents' shareholders dissented.

Relying upon B.C.L. §623(h)(4) respondents wish to view documents and question persons who have been directly involved in the valuation in order to challenge petitioner's calculation of fair value at trial. Given the circumstances of this case, it is a reasonable request yet it is met with opposition by petitioner.

Procedurally, petitioner argues that discovery is neither customary nor tolerated, and that the presumption of the statute is against discovery. It is an abstract statement which must be parsed to the circumstances of each special proceeding where as here the court's duty is to determine fair value of a dissenting share holder's stock after a majority action effecting a change in the corporate form. B.C.L. § 623. Jamaica Central Railways, Inc. was a closely held corporation and respondents are minority shareholders. A review of the statute discloses that the only reason the presumptively fair market value of shares of a merged corporation would not be allowed (see Miller Brothers Industries v Lazy River Investment Co., 272 A.D.2d 166, 167 (1st Dept 2000)), is if it was repetitive, duplicative, irrelevant and done with the intent to be irksome. See Dynamics Corp v Abraham & Co., 5 Misc. 2d 652, modified 6 A.D. 683 (1st Dept 1958) (Intent of the law is to balance needs of minority shareholder to receive fair value against minority's ability to thwart majority's desires).

Seemingly, none of the above is present in this case. While it is old law that net asset value, investment value and market value play a roll in fixing "fair value" of shares owned by dissenting shareholders, not all are pivotal in every valuation proceeding and respondents do not presume to make it so in this case. Endicott Johnson v Bade, 37 N.Y.2d 585 (1975).

The information petitioner has provided is the financial statements in the Proxy sent to respondents, a document titled "GTJ Reit Inc. projected 12 months revenue and expenses" and a copy of the "Empire Valuation Consultant's Report" dated April 13, 2006 of GTJ Co., Inc. It is a valuation of the minority interest in GTJ Co., Inc., a small shareholder of the pre-merger companies, based on information current to September 2006. It does not address the respondents' interest in the entire pre-merger company, Jamaica Central Railways, Inc., and it is not current as of the date of the merger.

Accordingly, respondents motion for discovery is granted, and it is

ORDERED that petitioner serve upon respondents by January 31, 2008 information regarding:

- 1) who prepared a valuation of respondents' shares in the pre-merger company;
- 2) the method of valuation employed;
- 3) the information considered in determining that valuation;
- 4) the discounts applied in arriving at a value of the dissenting shareholders' shares
- 5) the actual valuation report.

A conference shall be held on February 5, 2008, at 9:30 A.M., to establish a schedule for depositions and a date for the hearing.

On consent, respondents' application for consolidation is granted and the caption shall be amended as follows and shall proceed under the earliest Index Number of 009278/2007:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

In the Matter of the Application of JAMAICA
ACQUISITION, INC., successor by merger of
Jamaica Central Railways, Inc., and In the Matter of
the Application of GREEN ACQUISITION, INC.,
successor by merger of Green Bus Lines, Inc., and
In the Matter of the Application of TRIBORO
ACQUISITION, INC., successor by merger of
Triboro Coach Corporation,

Petitioners,

-against-

INDEX NO.: 009278/2007

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LEONA MILLER, JERALD STEINBERG, JAMES
MOLLE, THEA GAUSS, MELVIN SMITH and
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of Common Stock of Jamaica Central Railways, Inc.,
and to determine the Fair Value, pursuant to New York
Business Corporation Law § 623, of certain Shares of
Common Stock of Green Bus Lines, Inc., and to
determine the Fair Value, pursuant to New York
Business Corporation Law § 623, of certain Shares of
Common Stock of Triboro Coach Corporation, Inc.

Dated: December 6, 2007

ENTERED

Lu B. Warshawsky

J.S.C.

DEC 12 2007

NASSAU COUNTY
COUNTY CLERK'S OFFICE