

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of: : Index No.: _____/2018

GURNEY’S INN RESORT & SPA, LTD., a New York : **VERIFIED PETITION**
corporation, :

Petitioner,

and

NANCY ARZANIPOUR, PAUL ARZANIPOUR,
ANTHONY CARBONE, NEIL CARBONE, KEVIN
COTTER , DOLLY WANDER IRREVOCABLE
TRUST, LORRAINE FERRETTI, PATRICIA
FRANK-JANEWICZ, GEORGE ROSENFELD INC.,
MICHAEL GIORDANO, JANICE KATZ, CHRISTINE
LAURIA, NEIL CARBONE REVOCABLE TRUST,
MARCIA RUSKIN, JAY SCANSAROLI, JANICE
SCANSAROLI, JOSEPH SCOGNAMIGLIO, ALAN
SPARKS, SYSTEMATIC CONTROL CORP. and
VITO VITRANO

Respondents,

To Determine the Fair Value of the Common Shares of
Gurney’s Inn Resort & Spa, Ltd. Held by Respondents
Pursuant to Section 623 of the New York Business
Corporation Law.

Petitioner Gurney’s Inn Resort & Spa, Ltd. (“Gurney’s”), by its attorneys, Greenberg
Traurig, LLP, complaining of Respondents Nancy Arzanipour, Paul Arzanipour, Anthony
Carbone, Neil Carbone, Kevin Cotter, Dolly Wander Irrevocable Trust, Lorraine Ferretti, Patricia
Frank-Janewicz, George Rosenfeld Inc., Michael Giordano, Janice Katz, Janice Lauria, Neil
Carbone Revocable Trust, Marcia Ruskin, Jay Scansaroli, Janice Scansaroli, Joseph
Scognamiglio, Alan Sparks, Systematic Control Corp. and Vito Vitrano (each a “Respondent”
and together, the “Respondents”), alleges as follows:

Nature of the Proceeding

1. This is a proceeding brought pursuant to Section 623 of the New York Business Corporation Law (“BCL 623”) for a determination of the fair value of Respondents’ shares in Gurney’s, owner of the iconic resort of the same name in Montauk, New York. In 2013, the shareholders of Gurney’s ratified a plan by which it would cease operating as a cooperative timeshare resort at the end of 2017, Gurney’s would be sold, and any shareholders remaining at that time would receive a pro-rata distribution of the sale proceeds. The plan came to its fruition in March 2018 with the sale of Gurney’s through a merger described herein, and the offer to purchase the shares of all remaining shareholders based on an appraisal of Gurney’s as a going concern commissioned specifically for that purpose.

2. Respondents herein have rejected Gurney’s offer and thus Gurney’s is compelled by BCL 623 to institute this proceeding to determine the fair value of Respondents’ shares.

The Parties

3. Petitioner Gurney’s is a corporation duly organized under the laws of the State of New York, with its principal executive offices located c/o BLDG Management Co., Inc., 417 Fifth Avenue, 4th Floor, New York, New York 10016. Prior to the merger, Gurney’s had a total of 657,900 Class A shares issued and outstanding, at a par value of \$0.25 each.

4. Respondents are former shareholders of Gurney’s who collectively held 4,650 class A shares (less than one percent of the issued shares), who have dissented and elected not to accept the merger price offered for their shares. At all relevant times, Respondents’ ownership of Gurney’s Class A shares was as follows:

Shareholder Name	Class A Shares
Nancy Arzanipour and Paul Arzanipour	150
Anthony Carbone	650
Neil Carbone	400
Kevin Cotter	100
Dolly Wander Irrevocable Trust	100
Lorraine Ferretti	100
Patricia Frank-Janewicz	200
George Rosenfeld Inc.	500
Michael Giordano	200
Janice Katz	100
Christine Lauria	100
Neil Carbone Revocable Trust	650
Marcia Ruskin and Joseph Scognamiglio	400
Jay Scansaroli and Janice Scansaroli	200
Alan Sparks.	300
Systematic Control Corp.	200
Systematic Control Corp. and Neil Carbone	200
Vito Vitrano	100

Historical Background

5. While unnecessary in order to state a basis for relief pursuant to BCL 623, given that the merger triggering this proceeding has its roots in events and agreements that occurred several years ago, the following historical background is offered solely to help orient the Court and provide context for the issues that may be raised in this proceeding.

6. Gurney's was formed in 1981 to own and operate an existing and well-known spa/resort in Montauk on a cooperative timeshare basis. The business plan, however, was poorly conceived and executed. By 2013, Gurney's was on the brink of filing its second petition for bankruptcy protection (the first having been filed almost two decades earlier). Many of the timeshare units that were originally available for sale by the Sponsor remained unsold over the years, primarily because the shareholders who owned a weekly unit in the off-season were required to pay the same maintenance fees as shareholders whose weeks were during the sought-

after Summer season. Predictably, faced with increasing maintenance charges, some shareholders abandoned their timeshare units. Each abandonment by a shareholder left the remaining shareholders with an even greater financial burden.

7. As increasing numbers of off-season cooperative shareholders abandoned their units, Gurney's was left without the financial resources needed to properly maintain the resort. Both the financial condition of the corporation and the physical condition of the resort were in an accelerating downward spiral. By the Winter of 2012-2013, Gurney's was facing imminent bankruptcy without an injection of capital and a change in the overall business plan. It was then that representatives of the timeshare owners turned to George Filopoulos, an experienced "white knight" with a proven track record rehabilitating distressed cooperative apartment corporations, for assistance.

8. Mr. Filopoulos and his partners agreed to take over operations and invest the tens of millions of dollars necessary to save the iconic resort, on terms that were designed to phase out cooperative ownership. Over the years, other investors had attempted to propose viable plans to restructure Gurney's but were unable or unwilling to invest the capital and expertise required. Mr. Filopoulos negotiated a Memorandum of Understanding ("MOU") with representatives of the timeshare owners, whereby shareholders were given three options: (a) sell their shares to Mr. Filopoulos' group pursuant to a price schedule set forth in the MOU; (b) surrender their shares to the company, but continue to use their timeshare unit each year, without the obligation to pay maintenance fees, until January 1, 2018, when all interval proprietary leases would be cancelled; or (c) retain their shares and pay maintenance charges at significantly reduced rates up to the termination of all interval proprietary leases on January 1, 2018, and thereafter exchange their shares for a pro-rata distribution of the net proceeds from the sale of Gurney's. Mr. Filopoulos

guaranteed that maintenance would not increase during this time period (i.e., he and his investors would bear the costs of operations that exceeded the reduced maintenance that were being collected). Mr. Filopoulos also guaranteed that no shareholders would have to make capital contributions to renovate the facilities (that burden too, would be borne by Mr. Filopoulos and his partners).

9. Finalizing the MOU entailed successful negotiations with several separate constituencies of interested parties. First, the class A shareholders (the timeshare owners) had to agree to its terms and the three-option structure. Second, Mr. Filopoulos' group negotiated a severance package to settle claims of several long-standing Gurney's employees. Third, he reached agreement with the successor sponsor to buy out its interest in Gurney's. Fourth, he reached an agreement with the then-current directors appointed by the successor sponsor whereby they were released from liability arising from their acts as board members.

10. The MOU also included certain protections demanded by the representatives of the timeshare owners to ensure transparency in the dealings of the new board to be controlled by Mr. Filopoulos and his partners. It was agreed that the board would continue to consist of three (3) directors, two of whom were to be elected by Mr. Filopoulos and his partners, while the third seat would be reserved for a timeshare shareholder elected solely by the remaining timeshare shareholders. In addition, the MOU provided that the board of directors would also appoint another timeshare shareholder to serve as an additional non-voting member who could report back to the timeshare shareholders on all board activities. Finally, the MOU provided that the board would meet on a regular basis (at least 4 times each year) and that, with minimal exceptions, each board meeting would be open to all shareholders. *See* MOU ¶ 5[m].

11. The MOU and the transactions contemplated by it were approved by Gurney's board of directors. Thereafter, a special shareholders' meeting was held in April 2013, to ratify or reject the MOU. While only a simple majority vote was needed to approve, ultimately shareholders holding almost 85% of the Class A shares ratified the MOU. Thus, on May 29, 2013, following both board and shareholder approval of the MOU, Mr. Filopoulos, acting through a company he and his partners formed, 290 Old Montauk Associates LLC (together with Mr. Filopoulos, "White Knight"), closed on the acquisition of the successor sponsor's interests in Gurney's and assumed control of the company as contemplated by the MOU. A true and correct copy of the MOU is annexed hereto as Exhibit A.

12. The foregoing process ensured that all shareholders were aware that Gurney's would cease being a cooperative corporation as of January 1, 2018, and that the property would be sold to the highest bidder shortly thereafter. The MOU also afforded White Knight the right to purchase the property, provided that it offered the highest price and that such price was 95% of the appraised value of Gurney's as a going concern.

13. Following the series of closings on May 29, 2013 as prescribed by the MOU, White Knight bought 42.59% of the outstanding shares of Gurney's from shareholders who elected to sell their shares, at a cost of \$6,231,023.24. In addition, holders of another 9.6% of the outstanding shares of Gurney's surrendered their shares to the company in exchange for the right to use their timeshare units through the end of 2017 without paying maintenance charges. Moreover, White Knight invested in excess of \$30 million by providing Gurney's with operating funds as necessary and by rehabilitating and refurbishing most of the 109 rooms, including installing new windows, facades, siding, roofing, mechanical systems, carpet, bathrooms, furniture and fixtures; in addition all new restaurants were repositioned and other common area

improvements were made, including a new lobby, new banquet rooms, kitchen upgrades and the resurfacing of the salt water pool and replacement of its mechanical systems. In fact, the day of the closing in May 2013 when White Knight assumed control of Gurney's operations, it had to provide Gurney's with a \$500,000 capital infusion in order to pay employees who had not been paid in weeks and buy needed supplies (none of Gurney's vendors were then willing to sell to Gurney's on credit).

14. Over the course of the past five plus years, White Knight fulfilled the terms and conditions of the MOU. It invested approximately \$30 million to renovate and operate the facilities, resulting in increased occupancy rates as well as increased profitability of the spa, restaurant and catering facilities, while honoring its commitment not to raise maintenance and allowing the remaining shareholders to use the renovated premises on a timeshare basis. White Knight's investment increased the value of Gurney's, to the benefit of all owners, including the shareholders who had elected to remain until the end of the five-year period. The transformation of Gurney's has not been easy or swift. Gurney's broke even for the first time in decades in 2016, and realized a profit in 2017.

15. As originally contemplated and provided for in the MOU, at a duly noticed meeting of Gurney's board of directors, held on December 8, 2017, the board unanimously voted to "terminate Gurney's Interval Proprietary Leases effective January 1, 2018 in accordance with the Memorandum of Understanding dated February 13, 2013 and to which the Corporation is a party." A true and correct copy of the Notice of Board of Directors Meeting is annexed hereto as **Exhibit B**.

16. Immediately following the board of directors meeting on December 8, 2017, the duly noticed Annual Meeting of the Shareholders was held in order to, *inter alia*, "consider a

motion to ratify a decision by the Corporation's Board of Directors to terminate all interval proprietary leases effective January 1, 2018 in accordance with the Memorandum of Understanding dated February 13, 2013 ("MOU"), to which the Corporation is a party." This motion was overwhelmingly passed by a shareholder vote of 117,950 (98.21%) in favor and 2,150 (1.79%) against. In addition, the shareholders were also asked to vote on the following additional resolution: "to confirm those terms of the MOU (as previously approved by vote of the Corporation's Board of Directors and ratified by a super-majority of the shareholders (Class A and Class B) in 2013) which provide that the buildings and other assets of the Corporation shall be sold or otherwise disposed of in 2018, so as to maximize the net proceeds available for distribution to all shareholders of the Corporation." This second motion was similarly passed by a shareholder vote of 118,800 (99%) in favor and 1,200 (1%) against. A true and correct copy of the Notice of Annual Meeting of Shareholders is annexed hereto as Exhibit C.

17. The interval proprietary lease, which had been in use by Gurney's since 1981, expressly provided that the shareholders of Gurney's had the authority, by majority vote, to terminate all interval proprietary leases and "sell the building and liquidate the assets" of Gurney's. A true and correct copy of the Interval Proprietary Lease is annexed hereto as Exhibit D. See ¶ 37.

18. Despite efforts to market Gurney's property, starting in December 2017, White Knight had not received any bona fide offers from qualified buyers by March 16, 2018. Thus, White Knight elected to purchase the remaining Class A shares by merging 290 OMA, Inc., its wholly owned subsidiary, into Gurney's. Pursuant to the terms of the MOU agreed to in 2013, White Knight offered all of the remaining shareholders 95% of the value of their shares as

determined by an appraisal that was commissioned from the independent, blue chip appraisal firm, CBRE, Inc. as specified in the MOU.

19. Respondents, who are among those who chose to remain shareholders until Gurney's ceased operating as a timeshare cooperative, have been well aware since February of 2013, that the timeshare would cease at the end of 2017 and that by April 2018, they would be required to surrender their ownership interest in Gurney's for their pro-rata share of the net sales proceeds. In fact, if Gurney's was not purchased by a third party purchaser and had White Knight not voluntarily purchased the remaining timeshare owners' shares (by way of merger) by April 1, 2018, the MOU gave the remaining timeshare owners the absolute right to compel White Knight to purchase them at the full appraised value.

20. Ignoring the terms of the MOU and the reasons why the shareholders so overwhelmingly approved it in 2013, Respondents dissent in order to capitalize on continued investments and improvements by White Knight and the anticipated increase in profits and value that White Knight hopes will follow. Respondents, however, are entitled to receive only the fair value of their shares immediately preceding the merger. Respondents are not entitled to share in the potential future returns from an investment that they did not make.

The Merger

21. On March 19, 2018, at a meeting duly noticed and held and open to the shareholders to attend, the board of directors of Gurney's unanimously approved that certain Agreement and Plan of Merger dated as of March 19, 2018 by and between Gurney's and 290 OMA Inc. (the "Merger"). Also on March 19, 2018, at a separate meeting duly noticed and held, a majority of the board of directors and the sole shareholder of 290 OMA Inc., a New York corporation ("290 OMA") approved and adopted the Merger.

22. On or about March 19, 2018, pursuant to BCL 623, Gurney's caused to be mailed to all shareholders of record as of March 19, 2018, including Respondents, a Notice of a Special Meeting of Shareholders to be held on March 29, 2018 (the "Meeting Notice") for the purpose of (1) reporting to the shareholders on Gurney's marketing efforts to obtain third-party offers and (2) considering and voting upon the Merger. Annexed to the Meeting Notice were copies of (i) the Agreement and Plan of Merger, (ii) a confidential Information Statement describing the proposed Merger and the consideration that the Gurney's shareholders would receive in connection therewith, (iii) the Balance Sheet and Income Statement of Gurney's for the 2017 calendar year and (iv) instructions for viewing, on line, the CBRE, Inc. appraisal upon which the consideration offered to the shareholders was based. The appraisal was also made available for viewing at the office of Gurney's general counsel in Manhattan. True and correct copies of the Meeting Notice (with its attachments), are annexed hereto as **Exhibit E**.

23. On March 19, 2018, Gurney's caused to be mailed to all shareholders to whom the Meeting Notice had been sent, including Respondents, a Correction to the Meeting Notice, correcting an inadvertent reference to the date of the meeting as falling a Monday, when, in fact, March 29, 2018 was a Thursday. True and correct copies of affirmations of mailing the Meeting Notice and the Corrected Meeting Notice are annexed hereto as **Exhibit F**.

24. In response to the Meeting Notice and the Correction to the Meeting Notice, but before the shareholder's vote on the proposed Merger at the March 29, 2018 Special Shareholders' Meeting, notices of dissent were received from Respondents, each indicating the number of shares held by the shareholder, that the Respondent objected to the Merger, and demanding payment of the fair value of their shares. A true and correct copy of all of the objection notices received by Gurney's is annexed hereto as **Exhibit G**.

25. In an effort to delay or derail the Merger, on March 27, 2018, Respondent Alan Sparks acting individually and on behalf of a purported class of similarly situated Gurney's shareholders, commenced an action in the United States District Court for the Eastern District of New York and moved by Order to Show Cause for entry of a temporary restraining order precluding the shareholder vote from proceeding. After hearing oral argument from all sides on March 28, 2018, the Honorable Joanna Seybert declined to issue a temporary restraining order.

26. On March 29, 2018, the Special Shareholders' Meeting was held. A vote was held and the owners of 558,900 (representing 99.35% of all votes cast) voted in favor of the Merger and the owners of only 3,700 shares (representing only 0.65% of all votes cast) voted against the Merger, either in person or by proxy.

27. On March 29, 2018, Gurney's caused to be filed in the New York State Department of State, Division of Corporations and State Records, a Certificate of Merger reflecting the occurrence of the Merger. In accordance with the Certificate of Merger, on May 4, 2018, Gurney's filed an amendment to its Biennial Statement with the New York State Department of State, changing the address of the corporation to New York County (specifically, to c/o BLDG Management Co., Inc., 417 Fifth Avenue, 4th floor, New York, NY 10016). A true and correct copy of the new Biennial Statement issued by the Department of State is annexed hereto as **Exhibit H**.

28. On April 9, 2018, Gurney's caused to be mailed, by registered mail, to each of the Respondents, notice that the Merger had occurred and an offer to pay each of the Respondents, in cash, the sum of \$118.81 per share for all Class A shares of Gurney's stock held by each of the Respondents (the "April 9, 2018 Offer"). True and correct copies of the April 9, 2018 Offer mailed to each of the Respondents (with an affidavit of mailing) are annexed hereto as **Exhibit I**.

29. In the judgment of Gurney's, the sum offered to Respondents, a total of \$552,466.50, represents the fair value of Respondents' collective 4,650 shares of Gurney's as of the close of business on the day prior to the Merger.

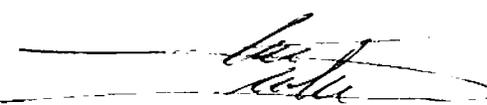
30. Upon information and belief, Respondents' rejections of the April 9, 2018 Offer were arbitrary, vexatious and otherwise in bad faith and were intended to pressure Gurney's into paying them an amount in excess of the fair value for their shares.

WHEREFORE, Petitioner requests that this Court grant the foregoing petition, pursuant to BCL § 623 as follows:

- (a) determine the value of the shares held by Respondents, such value to be determined as of March 28, 2018, in accordance with BCL § 623;
- (b) apportion and assess all the costs, expenses and fees incurred by Petitioner, including attorneys' fees, against Respondents; and
- (c) grant such other and further relief as this Court may deem just and proper.

Dated: New York, New York
May 11, 2018

GREENBERG TRAURIG, LLP

By: 

Steven Sinatra

Daniel R. Milstein

200 Park Avenue

The Metlife Building, 39th floor

New York, New York 10166

(212) 801-9200

sinatra@gtlaw.com; milsteind@gtlaw.com

Attorneys for Gurney's Inn Resort & Spa, Ltd.

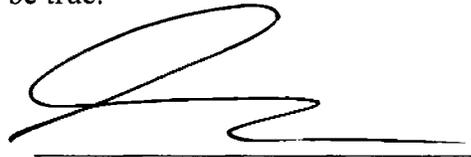
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

GEORGE FILOPOULOS, being duly sworn, deposes and says

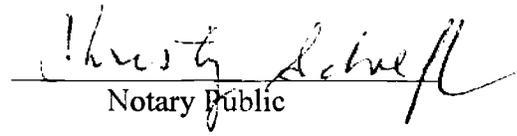
1. I am an officer and a director of Gurney’s Inn Resort & Spa, Ltd., the
Petitioner herein.

2. I have read the foregoing Petition and know the contents thereof. The
same is true to the best of my knowledge except to those matters stated to be upon information
and belief and as to those matters, I belief them to be true.



GEORGE FILOPOULOS

Sworn to before me this
11th day of May, 2018



Notary Public

CHRISTY SCHAEFFER
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4769958
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES AUG 31, 2018