

**In The Supreme Court Of The State Of Nevada**

NEWS+MEDIA CAPITAL GROUP  
LLC, a Delaware limited liability  
company; and LAS VEGAS REVIEW-  
JOURNAL, INC., a Delaware limited  
liability company,

Appellants,

v.

LAS VEGAS SUN, INC., Nevada  
corporation,

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

District Court Case No. A-18-772591-B

**RESPONDENT/CROSS-APPELLANT'S REPLY IN SUPPORT OF  
MOTION TO EXPEDITE APPEAL**

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The RJ's emphatic pleas to slow track this appeal shows its intent to stall and starve the Sun. Indeed, this may be the very first time an appellant with a multimillion dollar judgment against it has objected so vociferously to a speedier resolution of its own appeal. The RJ's Opposition exposes its ultimate motive: delay. Yet there are extraordinary justifications for expediting this appeal even in these extraordinary times. Delay has been an arterial bleed for the Sun, which the RJ has squeezed and will continue to squeeze until the Sun has bled out. A belated affirmance will not cure the Sun's troubles. On the other hand, the RJ will suffer no harm from a condensed schedule. After extensive testimony, briefing, and argument before the arbitrator and district court, little more needs to be said about the issues involved in this appeal. There will be no new legal breakthroughs.

The RJ has failed to offer any legitimate basis to refute the Sun's request, or any statement made by the Sun in its Motion and supporting Declaration about its dire financial condition. Even though the RJ makes numerous, unsubstantiated accusations, no one at the RJ, including its owner Sheldon Adelson, could possibly attest to any of the representations in the RJ's Opposition without perjuring themselves. When given the opportunity to deny or challenge sworn statements, the RJ continues to lob unsworn accusations in response. But this is neither the time nor the place for the Sun to respond to the RJ's lawyers' invectives (those assertions will be addressed in the federal forum in another matter). The present issue before this Court is the expedient resolution of the appeal from the district court's order confirming the arbitration award.

Besides the RJ's obvious effort to distract from the actual issue before this Court, *i.e.*, whether good cause exists under NRAP 2 to expedite this appeal, the irrefutable truth is this: the RJ has withheld all payments to the Sun since April 2017. The bloodletting caused by the RJ gets worse for the Sun every day. And, the Sun is no ordinary business. Through the Newspaper Preservation Act, Congress has declared that it is in the national public interest to preserve competing editorial viewpoints in daily print newspapers. The RJ seeks to deny essential funds to Las Vegas's essential editorial voice. Expediting the briefing and resolution of this appeal is warranted.

**A. THE RJ HAS MADE NO PAYMENTS TO THE SUN FOR THREE YEARS, AND THE SUN IS ENTITLED TO AMOUNTS DUE**

The RJ's personal attacks on the Sun's owner Brian Greenspun, the arbitrator, the district court, and even the judicial system as a whole, are unsupported and irrelevant to the Sun's Motion. All of the RJ's false allegations about the happenings before the underlying arbitration were provided without any evidentiary support. *See* Opp'n. Regardless, none of those baseless "factual" allegations are relevant to whether this appeal should be expedited. The only relevant facts at issue now are that the RJ has not made any payment to the Sun for the last three years, and the issues related to the RJ's non-payment have been consistently resolved in the Sun's favor before other fact-finders and tribunals. No matter how the RJ tries to spin the fanciful history between Mr. Greenspun and the RJ, *see* Opp'n 5-6, nothing changes the fact that the RJ started to withhold payments. *See* Mot. 5-6 & *id.* at Ex. 1 ¶¶ 7-9. Based on the arbitrator's ruling

on the Sun's entitlement to payments, the RJ continues to unlawfully withhold ongoing payments owed to the Sun to this day.<sup>1</sup>

The RJ's superficial attack on the arbitrator and the district court is likewise based on the false and conclusory assertion that EBITDA may be calculated without regard to the parties' express agreement. *See* Opp'n 6, 10. The joint operation EBITDA calculation is governed by the express terms of the JOA, which specifies that certain expenses are disallowed. The arbitrator interpreted these provisions based on their plain language, the accounting practicality of the parties' interpretations, and the negotiating parties' intentions as shown during eight days' worth of testimony, thousands of pages of evidence, and briefs. *See* Ex. 1. The fact-finding process undertaken in the arbitration by the arbitrator was rigorous. The arbitrator also rejected the RJ's repeated argument that the Sun had accepted the RJ's illegal accounting practices for years. *See* Ex. 1 at 5-6. The district court read the parties' extensive post-hearing arbitration motions with cited evidence, heard oral argument, and confirmed the arbitrator's award in its entirety.

In short, the outcome determinative—and undisputed—fact at issue is that the Sun has not been paid for three years. The Sun bargained for a 60-day resolution of accounting disputes, and after years of litigation, the Sun prevailed. Each passing month

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<sup>1</sup> The ongoing federal court action reinforces the Sun's need for expeditious resolution. The RJ only sought to terminate the JOA in violation of antitrust laws after losing in arbitration and running out of delay tactics. Any termination of a JOA, particularly one caused by predatory conduct, triggers antitrust scrutiny. To ensure its survival, the Sun requires prompt action in both state and federal courts.

compounds the injury because of the effect going forward. How many tens of millions of dollars the RJ will ultimately owe the Sun under the arbitrator's ruling remains unclear (for the RJ has yet to cooperate in an audit to confirm the scale of what the RJ owes to the Sun, and 20 years of future JOA calculations will be impacted). There is a clear and present threat to the Sun's viability if this appeal remains pending for multiple years.

### **B. THE RJ HAS NOT REFUTED THE SUN'S ECONOMIC HARM**

The RJ's unsubstantiated, factual claims about whether the Sun will actually and immediately go out of business during this appeal fails to rebut the Sun is facing severe economic harm and thus good cause exists to expedite this appeal. Again, logic and reason direct that any business operating without funds is at serious risk of collapse. It is undisputed that the RJ has withheld substantial amounts, as litigated and ordered by the arbitrator and confirmed by the district court.

### **C. GOOD CAUSE EXISTS TO EXPEDITE THE APPEAL**

The standard applied by this Court in determining whether to expedite an appeal under NRAP 2 is good cause. As this Court has previously found in other cases, good cause exists here, where the Sun faces economic hardship and the issues have been fully briefed in the court below.<sup>2</sup> *See* Mot. 7-8.

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<sup>2</sup> The RJ's attempt to distinguish the Sun's cited cases in footnote and on the basis that those cases were not decided during a pandemic is unpersuasive. *See* Opp'n 9 n. 11. While the Court might be closed to the public and people are working from home, appeals are proceeding.

The Sun described the economic harm that it will continue to face during this appeal process, in its Motion and supporting Declaration, which the RJ has failed to controvert. *See generally id.* at 5-7, 9-10. In summary, the RJ has not paid the Sun its Annual Profits Payments since 2017 (the Sun's sole source of income), and the RJ has been ordered to pay the Sun almost \$2 million for the identifiable wrongdoings. *See id.* at 9 & Ex. 1 ¶ 4; *see also* Ex. 1. But much more is at stake. The RJ must submit to an audit that will capture underpayment issues both identified by the auditor and as yet undetermined from 2015 forward, all of which will affect the 20 years remaining of the JOA. Ex. 1. The RJ's continued withholding exacerbates the economic hardship to the Sun. This withholding harms the public as well, as the Sun is the only alternative daily print newspaper in southern Nevada, the only relevant market area.

The arguments presented in this appeal were also fully briefed in the arbitration and before the district court. The RJ cannot present new arguments on appeal. With the underlying briefs already complete, there is no harm to the RJ if this Court expedites briefing, and the COVID-19 situation should not materially hamper the RJ's ability to comply with an expedited schedule. *See* Opp'n 10.

A traditional briefing schedule with possible extensions, however, furthers the RJ's goal and harms the Sun. The RJ's Opposition demonstrates that it is not serious about seeking a prompt reversal of the multi-million dollar judgment against it. The RJ's true motive is delay. *See id.*

DATED this 23rd day of April, 2020.

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP and that on this date, I caused the foregoing **RESPONDENT/CROSS-APPELLANT'S REPLY IN SUPPORT OF MOTION TO EXPEDITE APPEAL** to be served by electronically filing the foregoing with the Clerk of the Supreme Court of Nevada by using the ECF system, which will send notice of electronic filing to the following:

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/s/ Jessie M. Helm  
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# **EXHIBIT 1**

**Filed Under Seal**

# **EXHIBIT 1**