

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRICK GOLD CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GONZALEZ, DISTRICT
JUDGE, DEPT. XI,

Respondents,

BULLION MONARCH MINING, INC,

Real Party in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

**REPLY IN SUPPORT OF
COUNTERMOTION FOR A
STAY PENDING DECISION
ON WRIT PETITION**

I. INTRODUCTION

A. The District Court Denied the Requested Stay.

Bullion Monarch Mining, Inc.'s ("Bullion") delay maneuvering to continue with merits discovery is transparent. Indeed, Bullion is so desperate it claims that Barrick Gold Corporation's ("Barrick Gold") narrow stay request is "premature." Nonsense. The district court denied the motion "without prejudice" and its statement that the request may be "renewed if [this Court] orders an answer" is of no moment. The plain terms of the rule do not require the Court to order an answer before a stay is issued. Barrick Gold first moved for a stay in the district court. The district court denied the motion. Thus, this motion is properly before the Court. *See* NRAP 8(a)(2)(A)(ii) (providing a motion for a stay "may be made to the Supreme Court" if the "motion having been made, the district court denied the motion or failed to afford the relief requested . . .").

B. A Stay as it Relates to Barrick Gold is Warranted.

1. The object of the Petition will be defeated and Barrick Gold will suffer irreparable harm.

Bullion leans heavily upon *Fritz Hansen A/S v. District Court*, 116 Nev. 650, 6 P.3d 982 (2000), to insist Barrick Gold's present stay request is at odds with this Court's precedent. It is not. As Bullion points out, the primary focus in *Hanson* was the Court's abrogation of the special-appearance doctrine in Nevada. The object of the petition in *Hanson* was based on petitioner's concern that it will "be forced to

risk making a general appearance by answering the complaint." *Hansen*, 116 Nev. at 652, 6 P.3d at 983. Because the Court abrogated the special/general appearance doctrine, the Court determined that the petition's object would not be defeated. *Id.* at 657, 6 P.3d at 986. Yet, mere assurances that jurisdictional defenses have been preserved does not protect Barrick Gold from the object of this Petition.

The object of Barrick Gold's petition is to protect its constitutional due process rights that will be violated if coerced to participate in a foreign jurisdiction – one not even in the same country as its corporate citizenship – before the jurisdictional challenge is decided. Absent a stay, this object will be defeated. These constitutional violations are irreparable once inflicted. *See City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013).¹ The due process clause exists to protect infliction of these constitutional violations. This harm is fundamentally different from "participat[ing] in discovery and trial" or mere "litigation expense" that Bullion disingenuously conflates. (Opp'n at 11.)

Just as this Court has done several times post-*Hansen*, it should grant a stay here solely as it relates to Barrick Gold pending a decision on the Petition.

¹ Bullion's insinuation that Barrick Gold faces no irreparable harm because it is "represented by the same attorneys" is not supported by competent authority and is simply irrelevant. (Opp'n at 11.); *see also Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). Representation by the same attorneys as its subsidiaries does not negate the clear irreparable harm to Barrick Gold's due process rights.

See Order, Case No. 59976 (June 13, 2012) (stay pending parent company's writ petition on personal jurisdiction); Order, Case No. 65122 (Nov. 21, 2014) (stay pending writ petition on personal jurisdiction).

2. *Bullion will not suffer irreparable or serious injury.*

Bullion's generic complaints about "conducting discovery and obtaining a fair trial" do not constitute irreparable harm sufficient to defeat this request. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 40 (2004) ("mere delay in pursuing . . . litigation does not constitute irreparable harm"). But, perhaps more importantly, these complaints rest upon false assumptions.

For example, Bullion insists that its claims "cannot be fairly adjudicated without the participation of Barrick Gold." (Opp'n at 10.) Yet, Bullion's royalty claims arising from a 1979 Agreement are untethered to Barrick Gold's participation in this matter. Rather, Bullion has largely named Barrick Gold, the ultimate foreign parent company, under derivative theories of liability which the district court determined were premature remedies. In other words, Barrick Gold's participation may become relevant if Bullion obtains a liability judgment and award against the subsidiaries, and such judgment goes unsatisfied. Bullion's concocted and attorney-driven "fraudulent transfer" claim asserted in its Third Amended Complaint ("TAC") does not change this fact.

Similarly, Bullion's claim that conducting discovery without Barrick Gold will be difficult is belied by its own (and wrong) assertion that Barrick Gold purportedly faces no irreparable harm because "the litigation is particularly seamless here." Bullion's own admissions show that it faces no irreparable or serious injury from the narrow stay Barrick Gold is requesting while the Court decides the Petition's merits.

3. The Petition's Merits are Undeniable.

Bullion's assertion that the Petition is "meritless" is particularly amusing given the lengths and extent it has gone to avoid the Court from even reviewing the district court's decision. The district court's specific jurisdictional ruling is indefensible and clearly erroneous. Barrick Gold's involvement as a parent company in the transaction that led to the creation of a new joint venture subsidiary does not establish purposeful availment when none of Bullion's claims arise from this activity. *See Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 375, 328 P.3d 1152, 1157 (2014).

Bullion knows the district court got it wrong. As much as Bullion wants to pretend otherwise, that is the entire point of it adding a new frivolous "fraudulent transfer" claim in the TAC.² It is an ill-fated effort to fix the district court's flawed

² As the Court knows, Bullion has insisted that the TAC moots the present Petition. Barrick Gold, obviously, disputes this notion and has opposed. And, as Bullion attaches to the Opposition, Barrick Gold, out of an abundance of caution,

jurisdictional ruling. Yet, as Barrick Gold has pointed out, and Bullion does not dispute, this concocted claim does not and cannot support jurisdiction against Barrick Gold. *See* TAC ¶ 85 (the claim is not asserted against Barrick Gold); *see also Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049,1054 (2015) (explaining that Nevada law does not recognize accessory liability for fraudulent transfers).

A stay of the district court proceedings as to Barrick Gold pending these writ proceedings is necessary and warranted.

DATED this 17th day of March, 2021.

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has filed a renewed request to dismiss in the district court. Barrick Gold's motion did not include any additional exhibits/material that would need to be supplemented for this Petition. Bullion recently filed an Opposition which similarly did not include any supplemental material. *See* Ex. A. Yet, contrary to what it has told this Court, Bullion submitted to the district court that "the amended complaint does not disturb [the district court's] prior jurisdictional analysis." *Id.* The district court is set to hear this motion on March 29, 2021. Thus, this Court could hold the Petition in abeyance, and stay other proceedings pending the district court's ruling.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Pisanelli Bice PLLC, and that on the 17th day of March, 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **REPLY IN SUPPORT COUNTERMOTION FOR A STAY PENDING DECISION ON WRIT PETITION** to:

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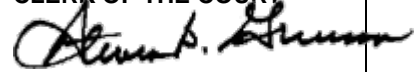
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EXHIBIT A



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DISTRICT COURT
CLARK COUNTY, NEVADA

BULLION MONARCH MINING,
INC.,

Plaintiff,

vs.

BARRICK GOLDSTRIKE MINES,
INC.; BARRICK GOLD
EXPLORATION INC.; BARRICK
GOLD CORPORATION; NEVADA
GOLD MINES, LLC; BARRICK
NEVADA HOLDING LLC; and DOES
1 through 20,

Defendants.

Case No. A-18-785913-B

Dep't No. 11

**OPPOSITION TO BARRICK GOLD
CORPORATION'S MOTION TO
DISMISS PLAINTIFF'S THIRD
AMENDED COMPLAINT**

Hearing Date: March 29, 2021
Hearing Time: 9:00 a.m.

This Court correctly rejected defendant Barrick Gold Corporation's previous bid to avoid this Court's jurisdiction, finding that "Barrick Gold Corporation and Barrick Nevada Holding LLC have . . . purposefully availed themselves of a

1 Nevada forum.” (Nov. 19, 2020 Order Regarding Motions to Dismiss and Mo-
2 tion for a More Definite Statement, at 3, ¶ 7.) Among other things, Barrick
3 Gold orchestrated the creation of a Nevada joint venture—Nevada Gold Mines
4 LLC—to convey and acquire mineral properties in Nevada, through agreements
5 from which some of Bullion’s claims arise:

6 4. The joint venture agreement creating Nevada Gold
7 Mines LLC includes mineral claims Bullion has previously al-
8 leged were included within the area of interest in the 1979
joint venture agreement under which Bullion claims royal-
ties.

9 5. If royalties are owed, Bullion is a beneficiary under
10 the Nevada Gold Mines joint venture agreement because of
the geographic area covered by the joint venture agreement.

11 6. The moving defendants did more than merely be an
12 owner of Nevada Gold Mines. They effectuated the processes
13 to create the joint venture agreement and the entity that
14 would be the joint venture, and implemented the items neces-
sary for the joint venture agreement to be effective. Bullions
claims arise in part from these agreements to which Bullion
is a beneficiary.

15 * * *

16 8. In addition, the forum-selection clause in the joint
17 venture agreement shows that it is not unreasonable for the
Court to exercise its jurisdiction in this case.

18 (Nov. 19, 2020 Order, at 2–3, ¶¶ 4–6, 8.)

19 Barrick Gold acknowledges that this Court “is likely not inclined to
20 change the substantive basis for its ruling.” (Barrick Gold Mot. Dismiss, at 2:5–
21 6.) And for good reason. All of the reasons for exercising personal jurisdiction
22 over Barrick Gold, including its role in the 2019 formation of the Nevada Gold
23 Mines joint venture, persist today. If anything, the new complaint makes the
24 jurisdictional analysis even easier, by adding allegations and a claim for fraudu-
25 lent conveyance based on those very transactions by Barrick Gold in 2019. This
26
27
28

1 Court should deny the motion.¹

2 **I.**

3 **WHY BULLION FILED AN AMENDED COMPLAINT**

4 As discussed in Bullion’s motion for leave to file the third amended com-
5 plaint (incorporated here), this latest complaint accomplishes two things:

6 First, it complies with this Court’s November 19, 2020 ruling that Bul-
7 lion’s alter-ego claim was more properly a remedy after judgment (not a sepa-
8 rate claim for relief), that Bullion is a third-party beneficiary of the formative
9 agreements of Nevada Gold Mines, LLC, that Bullion’s claim for constructive
10 trust was also a remedy (not a separate claim for relief), and that Bullion’s alle-
11 gations based on fraud needed to be pleaded with more specificity.

12 Second, based in part on Nevada Gold’s initial disclosures served Decem-
13 ber 4, 2020, the complaint adds a claim of fraudulent conveyance alleging that
14 “Goldstrike, Exploration, and other entities owned or controlled by Barrick Gold
15 transferred property” to Nevada Gold in violation of Nevada’s fraudulent con-
16 veyance act, NRS 112.010 *et seq.* (See 3d Am. Compl. ¶¶ 85–88.)

17 As discussed immediately below, the amended complaint does not disturb
18 this Court’s prior jurisdictional analysis. Indeed, the amended complaint pro-
19 vides further support for that analysis.

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21
22
23
24 ¹ Like Barrick Gold (*see* Mot. 3 n1.), Bullion incorporates all of its prior briefing
25 and arguments on the question of personal jurisdiction, which have been ad-
26 dressed in multiple motions and orders. In particular, because Barrick Gold’s
27 February 22, 2021 motion draws liberally from its previous motion, filed July
28 28, 2020, Bullion incorporates its opposition to that earlier motion, filed August
21, 2020. Bullion also incorporates here its concurrently filed opposition to Bar-
rick Goldstrike, Barrick Exploration, and Nevada Gold Mines’ motions to dis-
miss (and Barrick Gold’s joinder).

1 II.

2 **THIS COURT’S PRIOR FINDING OF “PURPOSEFUL AVAILMENT”**
3 **HAS EQUAL PURCHASE UNDER THE NEW COMPLAINT**

4 **A. Nothing in the New Complaint Undermines the**
5 **Court’s Prior Finding of Purposeful Availment**

6 “[W]here a defendant who purposefully has directed his activities at fo-
7 rum residents seeks to defeat jurisdiction, he must present a *compelling* case
8 that the presence of some other considerations would render jurisdiction unrea-
9 sonable.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

10 Barrick Gold itself recognizes that this Court previously found purposeful
11 availment sufficient to subject Barrick Gold to this Court’s jurisdiction. (*E.g.*,
12 Barrick Gold Mot. 15 n.7.) This Court’s analysis was based on Barrick Gold’s
13 own minimum contacts with Nevada, not merely those in its role as an agent or
14 alter ego of its subsidiaries. And Barrick Gold’s arguments in this motion
15 largely repeat those this Court rejected last time. Barrick does not identify a
16 single change from the previous complaint to the new one that makes the exer-
17 cise of jurisdiction *more* tenuous. This Court can and should reject Barrick’s ar-
18 guments now.

19 **B. Barrick’s Writ Petition is Moot as a Procedural**
20 **Matter and Because the New Complaint**
21 **Includes Additional Bases for Jurisdiction**

22 Barrick Gold bristles at Bullion’s filing a motion to dismiss Barrick Gold’s
23 writ petition. But Barrick Gold’s indignation is misplaced in at least two ways.
24 First, while the motion does not concern this Court, the motion was procedur-
25 ally necessary because Barrick Gold is asking for relief from a superseded com-
26 plaint. Second, the new complaint includes further support for this Court’s pre-
27 vious ruling, making clear that Bullion’s claims do not arise solely from the
28 1979 Agreement, as Barrick Gold insists, but from the very 2019 agreements to
which Barrick Gold was a party.

1 **1. *Barrick Gold’s Petition is Moot Because It Does***
2 ***Not Challenge the Operative Complaint***

3 The Nevada Supreme Court dismisses a writ petition if it becomes moot.
4 *Valdez-Jimenez v. Eighth Judicial Dist. Court*, 136 Nev. 155, 158, 460 P.3d 976,
5 981 (2020). And one of the ways that writ relief becomes moot is when the de-
6 fendant challenges personal jurisdiction under a pleading that has since been
7 amended. *Ex parte Puccio*, 923 So. 2d 1069, 1072, 1073, 1077 (Ala. 2005).

8 That is not a commentary on the correctness of the prior ruling or the pos-
9 sible continuing relevance of prior findings to an amended complaint that in-
10 cludes similar allegations. It is simply a procedural recognition that an
11 amended or supplemental complaint “supersede[s] all claims for relief alleged in
12 the original complaint.” *McKnight Family, L.L.P. v. Adept Mgmt.*, 129 Nev.
13 610, 615, 310 P.3d 555, 558 (2013).

14 Here, Barrick Gold’s petition is procedurally moot simply because it is not
15 directed at the operative complaint, regardless of the similarities between the
16 prior complaint and this one.

17 **2. *The Fraudulent-Conveyance Claim Provides***
18 ***Additional Jurisdictional Support***

19 Moreover, while nothing in the new complaint undermines the prior juris-
20 dictional ruling, the new fraudulent-conveyance claim *bolsters* that finding by
21 making clear Bullion’s reliance on the 2019 joint-venture agreements.²

22 Barrick Gold concedes that it orchestrated the formation of the Nevada
23 Gold joint venture specifically directed at transferring and operating valuable
24 mineral interests in Nevada. But Barrick Gold repeatedly insists that Bullion’s
25 complaint arises not from that venture, but solely from the 1979 Agreement, to

26 ² Although irrelevant to this Court’s decision, this further explains why it would
27 be inappropriate for the Supreme Court to decide the merits of the petition
28 based on the prior complaint, potentially overlooking the additional bases for
exercising jurisdiction over Barrick Gold.

1 which Barrick Gold claims it is not a party. Of course, Nevada Gold itself has
2 admitted that “[i]f an established obligation existed on the date the property
3 was transferred to NGM, such as a royalty, then NGM assumed that obliga-
4 tion.” (Nevada Gold Mines 8/6/20 Mot. 8:21–22.) That is in part why this Court
5 found that “[i]f royalties are owed, Bullion is a beneficiary under the Nevada
6 Gold Mines joint venture agreement because of the geographic area covered by
7 the joint venture agreement. (11/19/20 Order, at 2–3, ¶ 5.) And that is why
8 Bullion’s contractual and equitable claims even under the prior complaint suf-
9 ficed to hale Barrick Gold into this Court.

10 The fraudulent-conveyance claim provides an even more direct connection
11 to Barrick Gold’s 2019 joint-venture agreements. Bullion alleges that Barrick
12 Goldstrike and/or Exploration conveyed valuable mineral interests at Barrick
13 Gold’s behest without receiving adequate consideration, making Bullion’s roy-
14 alty insecure. Barrick Gold argues that this claim “is not even levied—nor
15 could it be—against Barrick Gold.” (Barrick Gold Mot. 12:3.) Bullion disagrees,
16 particularly since the allegation is that the transfers were from “entities owned
17 or controlled by Barrick Gold” and considering that the requested remedy—that
18 the transfers “be rescinded and/or voided” (3d Am. Compl. ¶ 86)—would have
19 the effect of invalidating the joint-venture agreement to which Barrick Gold is a
20 party. Regardless, the claim is squarely based on Barrick Gold’s transactions in
21 2019, including Barrick Gold’s joint-venture agreements. Barrick Gold’s effort
22 to paint this case as arising from nothing more than the 1979 Agreement is un-
23 tenable.

24 **C. The Forum-Selection Clause Shows that Barrick Gold Does**
25 **Not Consider Nevada an Unreasonable Forum**

26 Barrick Gold adds to its protest an argument that the forum-selection
27 clause in the limited-liability company agreement is “not relevant” because Bul-
28 lion supposedly cannot invoke it. (Barrick Gold Mot. 24:3–18.) This is wrong on

1 two counts. First, because the agreement concerns the transfer of mineral prop-
2 erties—including royalties on those properties in which Bullion claims an inter-
3 est—Bullion’s claim is a “matter[] relating to this Agreement and the rights and
4 obligations of the Parties hereunder.” (Barrick Nevada Holding App. 354, at
5 § 14.1.) The forum-selection clause applies directly. Second, regardless of
6 whether the clause itself extends to this dispute, it refutes the notion that sub-
7 jecting Barrick Gold to jurisdiction in Nevada—after having purposely availed
8 itself of a Nevada forum—is unreasonable.³

9 **CONCLUSION**

10 Just as this Court had jurisdiction over Barrick Gold under the previous
11 complaint, this Court continues to have jurisdiction over Barrick Gold under the
12 amended complaint. This Court should deny the motion.

13 Dated this 10th day of March, 2021.

14 LEWIS ROCA ROTHGERBER CHRISTIE LLP

15 By: /s/ Abraham G. Smith

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27 *Attorneys for Plaintiff*

28 ³ Barrick Gold’s reference to the Canadian forum-selection clause in the imple-
mentation agreement is a *non sequitur*. The fact that it would also be reason-
able to subject Barrick Gold to jurisdiction in Canada does not negate the reason-
ableness of a Nevada forum, where Barrick Gold has executed a separate agree-
ment and forum-selection clause.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b) and E.D.C.R. 8.05, I certify that I caused
3 the foregoing opposition to be filed via the Court's E-File & Serve System upon
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23
24 Dated this 10th day of March, 2021.

25 /s/ Jessie M. Helm
26 an employee of Lewis Roca Rothgerber Christie LLP
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