

Case No. 87943

IN THE SUPREME COURT OF THE STATE OF NEVADA

BLACKSTAR ENTERPRISES GROUP, INC

Appellant,

v.

GS CAPITAL PARTNERS LL,

Respondent,

Appeal from the Eighth Judicial District Court, Clark County
The Honorable Mark R. Denton, District Judge
District Court Case No. A-23-881099-B

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REPLY IN SUPPORT OF MOTION FOR STAY PENDING APPEAL

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Blackstar seeks a stay to prevent GS Capital from selling roughly 20% of Blackstar's stock based on an erroneous preliminary order granting GS Capital a mandatory injunction. The district court's mandatory injunction (which is currently stayed until **February 18**) improperly allows GS Capital to convert collateral securing a Note in a preliminary posture before Blackstar has even filed an answer, and for a Note that GS Capital has undisputedly accepted full payment for. Blackstar seeks a stay to allow this Court to evaluate the propriety of that extraordinary relief on appeal before its shares are sold on the open market. This narrow relief fits comfortably with the letter and intent of Rule 8(c).

ARGUMENT

A. This is an appeal from a preliminary hearing granting a mandatory injunction for the sale of 20% of Blackstar's stock.

GS Capital's entire argument ignores that this is an appeal from a preliminary hearing where the district court awarded GS Capital a mandatory injunction *without holding an evidentiary hearing*. The procedural posture here makes the district court's error plain and militates in favor of granting a stay so that the district court's error is not exacerbated before it can be corrected.

A preliminary injunction is designed to preserve the status quo. NRCP 65(a). Yet GS Capital seeks to capitalize on the district court's erroneous preliminary error by defeating a stay here and executing the full relief it *might* obtain after a trial before Blackstar even answers the complaint. Because GS Capital ignores the preliminary

posture of this case, it makes numerous representations about the district court's "findings" that are just wrong. There have been no findings—no evidence has yet been presented. That is precisely why it is prudent to maintain the status quo and prevent GS Capital from selling off 20% of Blackstar before this Court can address the issues raised in this appeal. GS Capital's misstatements include:

- No waiver of jurisdictional argument. Blackstar did not "waive" any jurisdictional argument. It raised the forum-selection clause in its responsive pleading, as Rule 12 requires. NRCP 12(h). Also, the jurisdictional argument is one of subject matter jurisdiction, which cannot be waived. *See Zalyaul*, 138 Nev. Adv. Op. 74, 520 P.3d 345, 347 (2022) (subject matter jurisdiction argument cannot be waived).
- GS Capital will sell 20% of Blackstar's stock if the stay is not maintained. Without citing any evidence, GS Capital misstates the amount of Blackstar's outstanding stock as "1.5 trillion." But Blackstar only has 1.5 billion shares outstanding, which means the mandatory injunction here allows GS Capital to sell roughly 20% of Blackstar if the stay is not maintained. This also would mean that GS Capital would have to "buy back" 20% of all available shares of Blackstar if the appeal is successful. **It may be impossible for GS Capital to "buy back" such a significant portion of the company's outstanding shares.**
- No District Court "findings" at all.
 - The district court did not make any "findings" about Blackstar's payment of the underlying Note. The only undisputed facts about the Note are that: Blackstar paid the amount outstanding as calculated by GS Capital, and GS Capital undisputedly accepted payment in full *before* it nonetheless requested a mandatory injunction to allow it to sell Blackstar's stock.
 - The district court undisputedly did not provide notice before issuing the mandatory injunction. Nor did Blackstar have an opportunity to present evidence. The relief was granted based on an argument and relief requested for the first time in response to

a sur-reply after a non-evidentiary hearing.

- The district court did not make any findings about the propriety of the mandatory injunction order under federal securities' law.

The district court's order constitutes clear error under settled law. A mandatory injunction cannot issue without proper notice and an evidentiary hearing. *See Serpa v. Darling*, 107 Nev. 299, 305 (1991). GS Capital does not defend the error on its own merits, but instead pretends the error did not occur, and that Blackstar received greater process than it did. That is simply not what happened.

Because Blackstar is likely to prevail on appeal, the Court should extend the district court's stay pending the appeal.

B. The object of the appeal—GS Capital's right to convert and sell Blackstar's stock—will undoubtedly be defeated if the stay is denied.

GS Capital does not dispute that, without a stay, the very object of the appeal will be defeated. *See* Blackstar's Motion at 7 (explaining that a stay is appropriate where, as here, the issue in dispute will irrevocably change without a stay). It is beyond dispute that the stock will be sold on the open market. GS Capital's opposition confirms that it has already sold 124 million shares and that it would need to "buy back" 257 million shares if the appeal is successful. *Opp.* at 9.

GS Capital does not dispute the settled law that this factor strongly favors a stay. Instead, GS Capital contradicts its central argument for obtaining a mandatory injunction in the first place by now suddenly claiming that it could simply "buy

back” the collateral it intends to sell. This is a stunning argument from GS Capital, which only obtained the mandatory injunction by claiming that Blackstar’s shares were “unique,” such that GS Capital had to sell them even after it had undisputedly received payment on the Note.

Because the object of the appeal will be defeated without a stay, a stay is appropriate.

C. GS Capital faces no prospect of harm, and it does not claim any tangible damages if the stay is extended.

Despite claiming earlier in the same brief that it could simply buy back Blackstar’s stock if the stay is not granted, GS Capital then also argues it faces irreparable harm because the stock may be worthless if a stay is entered. The truth is simple: GS Capital does not suffer any prospect of harm if the stay is granted. GS Capital has already been made whole on the Note—including because it accepted payment in full of the outstanding amount owed. Indeed, GS Capital has already recovered hundreds of thousands of dollars (at least \$600,000 total) beyond what it is owed from Blackstar—including interest, penalties, and attorneys’ fees. Motion, Ex. 6. GS Capital does not dispute any of this. GS Capital only claims that requiring it to sell stock later constitutes irreparable harm because of some anticipated change in the stock price. But this argument makes Blackstar’s point: preserving the status quo requires extending the stay while the underlying issue is resolved on appeal. That is the very purpose of the stay and why it is so appropriate here.

D. Blackstar faces extensive, irreparable harm.

Blackstar, on the other hand, will suffer irreparable harm if the stay is denied. Without a stay, roughly 20% of Blackstar's stock will be sold on the open market. Despite GS Capital's claim that it can simply "buy back" that stock and hand it back to Blackstar if the appeal is successful, there is no guarantee that all the stock can be recovered from the open market. Nor is there any reason to think that GS Capital will be in a position to buy back the stock. More importantly, dumping roughly 20% of a company's stock into the open market will destroy the company's value. GS Capital does not care about such a catastrophic decline in value, as it will no longer own any of the shares. But Blackstar will be irreparably harmed by such a sudden decline in value and may not be able to recover even if it succeeds on appeal. *See Dep't of Bus. & Indus., Fin. Inst. Div. v. Nevada Ass'n Servs., Inc.*, 294 P.3d 1223, 1228 (2012) (acts "which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury"); *Sobol v. Capital Mgmt. Consultants, Inc.*, 726 P.2d 335, 337 (1986) (damage to a business' reputation and goodwill constitutes irreparable harm). The extensive, undisputed irreparable harm Blackstar faces strongly favors granting a stay. For these reasons, this Court should issue a stay pending appeal.

DATED this 6th day of February 2024.

/s/ Eric D. Walther

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed and served the **REPLY IN SUPPORT OF MOTION FOR STAY PENDING APPEAL** with the Clerk of the Court of the Supreme Court of Nevada by using the Court's Electronic Filing System on February 6, 2024.

A copy of this filing has also been served on the Settlement Judge at jyoung@armadr.com.

/s/ Paula Kay
an employee of Brownstein Hyatt Farber
Schreck, LLP