

In the Supreme Court of Nevada

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Elizabeth A. Brown
Clerk of Supreme Court

BLACKSTAR ENTERPRISES GROUP,
INC.,

Appellant,

vs.

GS CAPITAL PARTNERS LLC,

Respondent.

**RESPONDENT GS CAPITAL
PARTNERS, LLC'S
OPPOSITION TO
EMERGENCY MOTION FOR
RULING ON PENDING
MOTION FOR STAY**

Respondent GS Capital Partners, LLC ("GS Capital") opposes Appellant Blackstar Enterprises Group, Inc.'s ("Blackstar") Emergency Motion for Ruling on Pending Motion for Stay ("Motion"). Blackstar cannot show irreparable harm as required by NRAP 27(e), and thus this Motion must be denied.

I. BACKGROUND

In its Motion, Blackstar continues to misstate facts to support its arguments in an attempt to create a false sense of urgency to obtain the extraordinary remedy of an indefinite stay.

First, Blackstar alleges that GS Capital will sell 20% of Blackstar's stock on the date the stay expires. This is a false statement, made repeatedly by Blackstar without any regard for the truth. GS Capital is currently only entitled to convert 9.98% of

Blackstar's stock (subject to equity blockers).

Second, Blackstar falsely asserts that GS Capital intends to sell all of the disputed stock upon the expiration of the district court's stay. GS Capital is limited in the percentage of Blackstar's stock it is able to convert at any given time. Specifically, GS Capital is only entitled to issue conversion notice to receive no more than 4.99% of Blackstar's stock at any given time. Nor has GS Capital articulated—nor can it—how or when it intends to sell such stock, decisions that are contingent on market conditions, among other considerations.

Third, Blackstar alleges that GS Capital does not 'care' about Blackstar's decline in value. Again, this is also incorrect and directly contradicted by GS Capital's interest in maximizing the value of Blackstar's stock. Blackstar's decline in stock price would degrade the value of the Blackstar shares that GS Capital receives through conversions.

Fourth, Blackstar asserts it elected to not file their initial Motion for Stay Pending Appeal on an emergency basis, because the district court's stay would not expire within 14 days. This argument wholly lacks merit because Blackstar could have filed its Motion on an emergency basis at the outset, and inexplicably failed to do so. Blackstar presents no new facts in support of its Motion.

a. RELEVANT FACTS

On October 11, 2021, the parties entered into a Securities Purchase Agreement

(“SPA”) and Convertible Redeemable Promissory Note (“Note”). *See* Piekarski Decl., Exs. “1” and “2”, Ex. A to Opp. to MTD (Dkt. No. 48). The Note included a “conversion option” that allowed GS Capital to convert the debt into shares of Blackstar’s publicly traded stock. In support thereof, the Note required Blackstar to establish a Stock Reserve in the amount of “four times the number of shares required if the note would be fully converted.” *See* Note, Section 12, **Exhibit “1”** to the Piekarski Decl. The Note also permitted GS Capital to “reasonably request increases from time to time to reserve such amounts” to ensure the Stock Reserve contained the required number of shares.

On November 2, 2023, GS Capital demanded that Blackstar increase the Stock Reserve by at least 700,000,000 shares, based on the remaining balance of the Note. *See* Omnibus Declaration of Gabe Sayegh, ¶ 8, Exhibit “F” to GS Capital’s Reply to its Injunction Motion (Dkt. No. 19). That same day, GS Capital submitted paperwork to exercise its conversion rights for 62,084,333 shares of Blackstar stock—the maximum amount allowed under the Note’s “equity blocker” prohibiting more than 4.99% ownership at any given time (“Nov. 2 Conversion”). *Id.* ¶ 9. Blackstar simply refused to comply with both requests.

The harm imposed by Blackstar’s breach was then compounded on November 7, 2023, November 10, 2023, and November 16, 2023 (the “Subsequent Conversions”), on which dates GS Capital would have converted and sold additional

shares. The Note afforded GS Capital conversion rights to 257,701,499 shares from November 2, 2023, to November 16, 2023. *See* Reply to Injunction Motion (Dkt. No. 19), 6:4-13; *see also* Decl. of Gabe Sayegh at ¶¶ 9-15.

On November 7, 2023, GS Capital filed its Complaint and a motion for a temporary restraining order, preliminary injunction and specific performance to enforce Blackstar’s compliance with the terms of the Note (“Injunction Motion”).

During the Injunction Motion briefing, Blackstar tried to retroactively cure its breach (and resulting damages) by wiring an incorrect sum of funds to GS Capital, despite GS Capital’s protests, then using that wire to argue that the Note was *retroactively* fully paid off and the Complaint and Injunction Motion were thus moot. After entertaining oral argument and allowing both parties to submit supplemental briefing on the issue, the district court entered its Order granting GS Capital’s Injunction Motion on December 18, 2023, holding, *inter alia*, that Blackstar’s wire could not retroactively cure its purposeful breach. Importantly, in all the briefing and oral argument on the Injunction Motion, Blackstar did not once raise any objection to the district court’s jurisdiction.

Dissatisfied with the Order, Blackstar moved for reconsideration on December 29, 2023 (“Reconsideration Motion”), arguing that the district court had committed “clear error” and asserting, for the first time, the exact jurisdictional argument that serves as the basis for its Motion to Stay—that the SPA’s jurisdiction

provision somehow dictates jurisdiction for a breach of the Note. *See* Reconsideration Motion, Section III.C.1. The Court correctly rejected this argument and denied Blackstar’s Reconsideration Motion on January 16, 2024. *See* Order Denying Blackstar’s Motion for Reconsideration. Despite rejecting the Reconsideration Motion on the merits, the district court stayed the Order until this Court could determine whether a stay pending appeal is appropriate. *Id.*

Blackstar seeks emergency relief based on false statements. It continues to argue it should be granted a stay without providing support for its assertions. This Court cannot grant Blackstar’s Motion purely based on Blackstar’s speculations and false assertions.

II. ARGUMENTS / LEGAL ANALYSIS

The NRAP 27(e) provides a method for filing emergency motions, requiring a movant to certify that in order to “avoid irreparable harm” the relief sought is “needed in less than 14 days” At the heart of this rule lies the requirement of irreparable harm.

Blackstar cannot succeed on showing irreparable harm, because it simply does not exist. There are no new facts to support Blackstar’s contention that an emergency exists. In an effort to get this Court’s attention, Blackstar misrepresents to this Court that GS Capital will convert and sell 20% of Blackstar’s stock unless a stay is in place. However, GS Capital is limited to the number of shares it can convert at any

given time, not to exceed 4.99 percent. Blackstar misleadingly attempts to paint a vague (though entirely unsubstantiated) picture of irreparable harm, even though Blackstar negotiated to grant GS Capital the right to exercise the option to convert shares. Separate and apart from the fact that the stay motion lacks merit, Blackstar has not met its burden of demonstrating that an emergency ruling on its stay motion is warranted under the circumstances of the case and the facts of the case.

CONCLUSION

For the foregoing reasons, Blackstar's Motion for an emergency ruling on its stay motion lacks merit and therefore should be denied.

DATED: February 9, 2024

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed and served the **RESPONDENT
GS CAPITAL PARTNERS, LLC'S OPPOSITION TO EMERGENCY MOTION
FOR RULING ON PENDING MOTION FOR STAY** with the Clerk of the Court of
the Supreme Court of Nevada by using the Court's Electronic Filing System on the below
listed date:

DATED: February 9, 2024

/s/ Annette Jaramillo
An Employee of Lewis Roca Rothgerber Christie LLP