

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ELI APPLEBAUM, as an individual,
Plaintiff,
v.
GERALD BARAD, an individual; ABS
MAGIC ENTERPRISE, LLC, a Nevada
limited liability company; and DOES 1
through 50, and ROES 1 through X, inclusive;
Defendants.

Case No.: 2:24-cv-000603-MMD-EJY

and related case

ELI APPLEBAUM, as an individual,
Plaintiff,
v.
GERALD BARAD, an individual; ABS
SILVERADO ENTERPRISE, LLC, a Nevada
limited liability company; and DOES 1
through 50, and ROES 1 through X, inclusive;
Defendants.

Case No.: 2:24-cv-000605-MMD-EJY

ORDER GRANTING JOINT
STIPULATION AND
[Proposed] ORDER TO
STAY RELATED MATTERS

Plaintiff Eli Applebaum and Defendant Gerald Barad (collectively, the "Parties"), by and
through their undersigned counsel, hereby enter into the following stipulation and respectfully
submit the following proposed order.

WHEREAS:

- i. On February 9, 2024, Plaintiff Applebaum filed an action in Eighth Judicial District
Court, Clark County, Nevada (the "Eighth Judicial District Court"), under the title Eli Applebaum
v. Gerald Barad, ABS Magic Enterprise, LLC, et al., No. A-24-886873-B (the "ABS Magic
Action");
ii. On February 29, 2024, Plaintiff filed an action in the Eighth Judicial District Court
under the title Eli Applebaum v. Gerald Barad, ABS Silverado Enterprise, LLC, et al., No.
A-24-888159-B (the "ABS Silverado Action") (collectively, with the ABS Magic Action, the
"Related Actions");
iii. On March 27, 2024, Defendant Barad removed the Related Actions to this Court;

1 iv. On April 26, 2024, Plaintiff filed motions to remand the Related Actions to the
2 Eighth Judicial District Court (the “Motions to Remand”), to which Defendant Barad’s opposition
3 papers are due on or before May 10, 2024, and to which Plaintiff’s reply papers are due on or
4 before May 17, 2024;

5 v. On April 30, 2024, the Court entered the Reassignment Order in the Related
6 Actions, reassigning the ABS Silverado Action to Chief District Judge Miranda M. Du and
7 Magistrate Judge Elayna J. Youchah;

8 vi. Plaintiff and Defendant Barad are also parties to the matter of *NYLV Investors, LLC*
9 *v. Applebaum*, et al., Index No. 656618/2022, currently pending in the Supreme Court of the State
10 of New York, County of New York (the “New York Action”)

11 **WHEREAS:**

12 vii. Both the Related Actions and the New York action arise from a wider dispute
13 between two business partners, Plaintiff Applebaum, a resident of Nevada, and Defendant Barad,
14 a resident of New York. (*Compare* ABS Silverado Compl. ¶¶ 1-2, 7 *with* ABS Magic Compl. ¶¶
15 1-2, 7);

16 viii. In the Related Actions, Plaintiff seeks declaratory relief dissolving companies in
17 which he and Barad both own membership interests: ABS Magic Enterprise, LLC (“ABS Magic”)
18 and ABS Silverado Enterprise, LLC (“ABS Silverado”). (*Compare* ABS Magic Compl. ¶¶ 1-2,
19 30 *with* ABS Silverado Compl. ¶¶ 1-2, 37). Plaintiff and Defendant are the only members of each
20 company, with both owning 50% of each company. (*Compare* ABS Magic Compl. ¶¶ 1-2 *with*
21 ABS Silverado Compl. ¶¶ 1-2);

22 ix. Each of the Related Actions seek, inter alia, declaratory relief directing the sale of
23 the assets of those two companies and distribution of the proceeds of those sales in accordance
24 with their respective operating agreements. (*Compare* ABS Magic Compl. ¶ 30 *with* ABS
25 Silverado Compl. ¶ 37). Those properties are:

26 ///

27 ///

28 ///

1 a. In the ABS Magic Action, the property in Clark County, Nevada identified
2 as APN 179-28-721-002 (the “ABS Magic Property”), owned by ABS
3 Magic (*see* ABS Magic Compl. ¶ 12);

4 b. In the ABS Silverado Action, the property in Clark County, Nevada
5 identified as APN 178-10-515-003 (the “ABS Silverado Property”), owned
6 by BA Gibson Development, LLC (“BA Gibson”), an entity in which ABS
7 Silverado is the sole member and manager (*see* ABS Silverado Compl. ¶¶
8 18-19); and

9 **WHEREAS,**

10 x. On or about April 15, 2024, BA Gibson, through Plaintiff Applebaum, received a
11 bona fide offer from a non-party buyer for the purchase of the ABS Silverado Property;

12 xi. Should that proposed transaction proceed to closing, ABS Silverado’s most
13 significant asset – the ABS Silverado Property – will have been disposed, thereby rendering much
14 of the ABS Silverado Action moot;

15 xii. Separately, Plaintiff and Defendant Barad have been engaged in negotiations for a
16 global resolution of their dispute, which – if agreed to and consummated – would likely dispose
17 of the remainder of the ABS Silverado Action, the ABS Magic Action, and the New York action;
18 and

19 **WHEREAS,** the Parties have agreed to seek a stay of all proceedings in both of the Related
20 Actions for a period of thirty (30) days pending the potential transfer of the ABS Silverado
21 Property and continued settlement negotiations between the Parties; and

22 **WHEREAS,** the Parties respectfully submit that a thirty-day stay of the Related Actions
23 will not prejudice either party; will streamline the issues before the Court and save substantial
24 judicial resources should the proposed purchase of the ABS Silverado Property close or should the
25 Parties agree to a global resolution of their dispute; will promote the objectives of Rule 1 to ensure
26 a just, speedy, and inexpensive determination of every action, *see, e.g., Long v. Gamo Outdoor*
27 *S.L.U.*, No. 2:22-cv-00670-JAD-DJA, 2022 WL 2819662, at *2 (D. Nev. July 18, 2022); and that
28 good cause therefore exists for a stay of proceedings;

1 **IT IS HEREBY STIPULATED** by and between the Parties, subject to the approval of the
2 Court, that:

3 1. The Related Actions are hereby stayed;

4 2. The stay of proceedings in each of the Related Actions shall be terminated without
5 further order of Court upon the expiration of thirty (30) days from the date on which the Court
6 endorses this stipulation, unless the expiration of that period occurs on a Saturday, Sunday, or legal
7 holiday, upon which the stay shall terminate on the next day that is not a Saturday, Sunday, or
8 legal holiday;

9 3. Except as further ordered by the Court, (i) the deadline for Defendant Barad to file
10 and serve any papers in response to the Motions to Remand shall be seven (7) days after
11 termination of the stay, and (ii) the deadline for Plaintiff to file and serve any reply papers in further
12 support of the Motions to Remand shall be seven (7) days after service of Defendant Barad's
13 response;

14 4. Except as further ordered by the Court, the deadline for the Parties to submit a
15 discovery plan and scheduling order pursuant to Local Rule 26-1 for each of the Related Actions
16 shall be adjourned until the Court disposes of the Motions to Remand. In the event that the Court

17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 denies the Motions to Remand, the deadline for the parties to submit that discovery plan and
2 scheduling order shall be twenty-one (21) days after the date of that order.

3 Dated this 8th day of May 2024.

4 Respectfully submitted,

5
6 **KEMP JONES, LLP**

FOX ROTHSCHILD LLP

7 /s/ Spencer H. Gunnerson
8 SPENCER H. GUNNERSON (8810)
9 MADISON S. FLORANCE (14229)
10 3800 Howard Hughes Parkway, 17th Floor
11 Las Vegas, Nevada 89169
12 (702) 385-6000 Tel
13 (702) 385-6001 Fax
14 s.gunnerson@kempjones.com
15 m.florance@kempjones.com

/s/ Colleen McCarty
MARK J. CONNOT (10010)
COLLEEN E. MCCARTY (13186)
1980 Festival Plaza Drive, #700
Las Vegas, Nevada 89135
(702) 262-6899 Tel
(702) 597-5503 Fax
mconnot@foxrothschild.com
cmccarty@foxrothschild.com

16 *Attorneys for Plaintiff Eli Applebaum*

Attorneys for Defendant Gerald Barad

17 **SO ORDERED**, this 9th day of May 2024.



18 _____
19 Miranda M. Du, Chief District Judge
20 UNITED STATES DISTRICT COURT
21 DISTRICT OF NEVADA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I certify that I am an employee of Fox Rothschild LLP, and that on the 8th day of May 2024, I caused a copy of the foregoing document entitled **JOINT STIPULATION AND [Proposed] ORDER TO STAY RELATED MATTERS** to be served via electronic transmission via the Court’s CM/ECF filing system.

/s/ Deborah Pressley
An Employee of Fox Rothschild LLP