CIRCUIT COURT FOR BALTIMORE CITY

ALLEN R. HARTMAN, *et al.*	*	
Plaintiffs	*	
v.	*	**Case No.: 24-C-23-003722**
SILVER STAR PROPERTIES REIT, INC., *et al.*	*	
Defendants	*	

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MEMORANDUM OPINION

This case involves a dispute within a Maryland real estate investment trust ("REIT") called Silver Star Properties REIT, Inc. (hereinafter "Silver Star"). A bench trial commenced on November 12, 2024 and proceeded for six days. Closing arguments were heard on November 26, 2024. Limited post-trial briefs were submitted on November 27 and December 6, 2024.

I. THE PARTIES

Plaintiff Alan R. Hartman is a resident of Texas and the founder of Silver Star.[1] Plaintiff was Chairman of the Board, President, and Chief Executive Officer ("CEO") of Silver Star for over 13 years. Plaintiff remains a Director and stockholder of Silver Star.

The other nominal plaintiff is an entity called Hartman vREIT XXI, Inc. (hereinafter "Hartman XXI"). Plaintiff is CEO of Hartman XXI. Prior to trial, summary judgment was granted to all Defendants on all of Hartman XXI's claims.

Defendant Silver Star was formed on February 5, 2009 for the purpose of owning and managing Class B office space in the Houston, Dallas and San Antonio, Texas areas. Silver Star was structured as a public non-traded REIT.

[1] Silver Star was originally called Hartman Short Term Income Properties XX, Inc., but its name was changed in 2023.

Defendant Jack Tompkins was one of the original Directors of Silver Star, having been appointed in February of 2009. Defendant Tompkins was identified in official Silver Star filings as an "Independent Director." Defendant Tompkins remains on Silver Star's Board.

Defendant Gerald Haddock was appointed as an Independent Director of Silver Star on May 14, 2020. Defendant Haddock is currently the CEO of Silver Star and remains a member of its Board of Directors.

Defendant James Still was appointed as an Independent Director of Silver Star on May 14, 2020. Defendant Still remains a member of Silver Star's Board.

II. RELEVANT FACTS

A. Background

Shares of public non-traded REITs can be sold to the public but are not listed or traded on a public stock exchange. Typically, shares are sold to individual investors through financial advisors, not to institutional investors such as mutual funds or pensions. Public non-traded REITS are required to file reports with the Securities Exchange Commission ("SEC"). If the public non-traded REIT does not permit redemption or trading of shares, the stockholders' investments are "locked-in" unless the REIT (1) becomes publicly listed, (2) is merged into another entity, or (3) terminates and liquidates its assets.

Silver Star's Charter does not permit redemption or trading of shares. It does, however. include a provision requiring Silver Star to liquidate itself if its stock is not listed on a public exchange within ten years of the completion of its "initial public offering," unless the stockholders had pre-approved an extension. Pursuant to this provision, stockholders had some assurance that they would not be "locked in" to their investment for more than ten years. The benefit to investors during the interim was the anticipated payment of regular distributions.

B. <u>Silver Star's IPO</u>

On October 23, 2009, Silver Star filed a form S-11 with the SEC to register 27,500,000 shares for sale. The shares were divided into two sets: a "primary offering" of 25,000,000 shares, and 2,500,000 shares as part of a dividend re-investment program ("DRIP"). Silver Star paid a fee for the registration. The SEC approved the Form S-11 on February 9, 2010, thereby allowing Silver Star to issue its prospectus to interested investors and begin selling shares.

As admitted by Plaintiff at trial, Silver Star made mistakes during its initial effort to sell stock. Among other things, Silver Star failed to file "a post-effective amendment to its prospectus," thereby putting it in violation of SEC regulations. As a result, Silver Star stopped selling stock on April 25, 2013. By that date, Silver Star had sold a total of 4,445,678 shares from the "primary offering."

On May 13, 2013, Silver Star filed a Form S-11/A, an amendment to its original Form S-11. In the Form S-11/A, Silver Star registered 20,000,000 shares in its "primary offering" and 2,000,000 shares in its DRIP offering. Silver Star took a discount on the fee paid for this registration by taking a credit for the unsold shares for which it had already paid a fee. On July 16, 2013, the SEC approved the Form S-11/A registration, thereby allowing Silver Star to issue its new prospectus and re-commence selling shares.

In the new prospectus, Silver Star called the shares that it sold up through April 25, 2013 its "initial public offering" ("IPO"). Silver Star called the stock being offered in conjunction with its amended registration a "follow-on offering." Silver Star continued to repeat those characterizations in all of its public filings into 2023.

On October 7, 2016, Silver Star ceased selling shares. All told, Silver Star sold approximately 18.6 million shares to approximately 4,500 stockholders.

C. Silver Star's Attempts to Have an Annual Meeting

On its own initiative, Silver Star announced that it would hold a stockholder meeting on October 27, 2015 in Houston, Texas. However, the annual meeting did not occur because Silver Star was unable to get the participation of a quorum of shares. Silver Star tried again in 2016 but was, again, unable to have the meeting because of its failure to obtain a quorum. Silver Star never attempted to have an annual meeting again.

D. The Efforts to List Silver Star on a Public Exchange

In 2015, Plaintiff hired an advisor to guide the company towards listing on a public exchange. The advisor arranged for meetings with investment banks who could potentially sponsor the listing. Those meetings continued through 2019 when Plaintiff abandoned the plan because, in Plaintiff's view, the investment banks discounted Silver Star's assets too deeply and demanded too high of a premium for their service.

Rather than launching another public offering of stock, Plaintiff initiated several actions with the goal of eventually listing Silver Star on a public exchange. First, he initiated a merger of a related Hartman entity into Silver Star, which was completed on May 14, 2020. Second, Plaintiff arranged for an unsecured loan of $10,000,000 from Hartman XXI to Silver Star, with a repayment deadline of October 31, 2022. Some time later, Hartman XXI extended an additional $7,168,000 to Silver Star. Silver Star has publicly acknowledged this debt in SEC filings.

Plaintiff also spearheaded the creation of a Delaware limited liability company called Hartman SPE, LLC (hereinafter "Hartman SPE"). Members of Hartman SPE included Silver Star, Hartman XXI and other Hartman-related entities. Hartman SPE was formed to be the holding company of the members' office building assets. In the Hartman SPE operating agreement, its members expressly disavowed ownership "interest in any specific assets of the

Company." Ultimately, Silver Star would come to own 94.16% of Hartman SPE, while Hartman XXI owned 5.84%.

E. COVID 19 and Financial Problems

The COVID-19 pandemic posed significant financial challenges for Silver Star because, among other reasons, the demand for office space dwindled. In response, Silver Star, as guided by Plaintiff, took several actions. Silver Star undertook a $259 million single-asset-single-borrower ("SASB") loan from Goldman Sachs. This two-year loan, renewable for an additional year at a floating interest rate, became a critical focus for Silver Star. Plaintiff took primary responsibility for refinancing the SASB loan and engaged Jones Lang LaSalle ("JLL") as an advisor to assist with this effort.

Additionally, the Board of Silver Star – which by this time included Defendants Haddock and Still – started to actively consider the merger of Silver Star into Hartman XXI. Hartman XXI is different than Silver Star because stockholders can redeem their shares and because it does not have a hard liquidation date. Thus, merging Silver Star into XXI would provide Silver Star stockholders an alternate vehicle for liquidity while also providing Plaintiff an extended period of time to fulfill his goal of taking a company public. Plaintiff was primarily responsible for negotiating the merger between Silver Star and Hartman XXI. Over the next couple of years, the status of this potential merger shifted repeatedly – seemingly on in November 2020, off in January 2021, and back on by October 2021.

During a Board meeting on January 25, 2022, Plaintiff led a discussion regarding the status of the refinancing and merger efforts. At that time, Plaintiff made no indication that there was a problem with either initiative. In addition, Plaintiff made no mention of a requirement to

liquidate Silver Star in April of 2023 if the company had not yet been listed on a public exchange.

Things began to change for the worse by the Spring. During a Board meeting on April 14, 2022, Plaintiff indicated that he had discharged JLL and was going to proceed with seeking short-term refinancing with assistance from Goldman Sachs. Again, Plaintiff did not mention a requirement that Silver Star liquidate in approximately 12 months if the company had not yet been listed on a public exchange.

By June 2022, Goldman Sachs notified the Board that unfavorable market conditions would impede any refinancing efforts, exacerbating Silver Star's financial crisis. At a board meeting on July 8, 2022, Plaintiff informed the Board that the refinancing effort had failed. Concerns[2] regarding rising debt financing costs and cash-flow shortages compelled the Board to vote to suspend distributions to the stockholders. Despite these hurdles, Plaintiff still did not mention that Silver Star would have to liquidate in less than 10 months if the company had not yet been listed on a public exchange.

Around this same time, it also became evident that the merger between Silver Star and Hartman XXI would not happen.

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[2] At trial, Defendant Tompkins testified that the failure to obtain refinancing caused a panic within the company because rising interest rates were putting the company at risk. Conversely, Plaintiff denied the urgency of the situation, stating he doubted the lenders would foreclose.

The Court found Plaintiff to have general credibility issues stemming from instances in which Plaintiff had been shown to be dishonest, including (1) his inclusion of Hartman XXI as party in this and another case without the approval of Hartman XXI's board of directors, (2) his filing of *lis pendens* in a related case without legal cause, and (3) intentional misrepresentations that he made in an e-mail sent in August of 2023.

As to this specific issue, the Court accepts Defendant Tompkins' version as more accurate because Plaintiff's version is belied by the years of effort expended in trying to refinance the debt and by the fact that Plaintiff agreed to the suspension of distributions.

On August 7, 2022, the Directors received an anonymous e-mail with the subject line "Remove Allen Hartman as President and Chairman of the Board." This e-mail contained several allegations of wrongdoing by Plaintiff and led to an internal investigation. This investigation uncovered the fact that Plaintiff had received over $200,000 in distributions even though the Board had suspended distributions in July. This issue was discussed at a Board meeting held on September 20, 2022. While Plaintiff offered to pay back the distributions by returning stock to the company, the Directors refused the offer and demanded repayment.

F. Silver Star Attempts to Address its Financial Situation and Sever Ties with Plaintiff

Within approximately six months, the Board had been confronted with several sobering facts: (1) the refinancing effort had failed, (2) the efforts to merge Silver Star into Hartman XXI had failed, (3) Silver Star's cash flow was worse than expected and (4) Plaintiff had improperly received funds without the Board's approval. In response, the Board took three actions at its meeting on October 14, 2022. First, Plaintiff was "transitioned" from CEO to Executive Chairman of the Board. Second, Silver Star hired a new CEO. Third, Silver Star created an Executive Committee comprised of the three Defendant Independent Directors.

The main reason for forming the Executive Committee was to enable the company to act quickly during what was believed to be a critical time for the company. The Executive Committee immediately began analyzing a shift in strategy for Silver Star, away from leasing Class B office space to owning and managing self-storage facilities (hereinafter, the "Pivot Plan"). Although Plaintiff opposed the Pivot Plan, Silver Star's Executive Committee directed its subsidiary, Hartman SPE, to begin selling office building assets, in an effort to aid in the debt refinancing effort and to finance the purchase of self-storage facility assets.

Over the next several months, the Executive Committee worked to sever ties with Plaintiff, leading to a January 9, 2023 letter of intent to separate Silver Star from Plaintiff and Hartman XXI. At about the same time, Silver Star's CEO raised the issue of the looming liquidation deadline, which was discussed at an Executive Committee meeting on January 19, 2023. The minutes from that meeting reflect that the Executive Committee discussed "the Company's Charter Provision which purports to require the Company to list its shares on a public exchange or liquidate its assets by April of 2023."

Having not reached an agreement after months of negotiations, Plaintiff and representatives from Silver Star, including the individual Defendants, met on March 2, 2023. While the details of what was said at the meeting are in dispute, it is undisputed that the meeting got heated and that the negotiations did not result in an agreement.[3]

Following the failed negotiation, the Executive Committee removed Plaintiff as Executive Chair of the Board.

To address the Charter provision by April 25, 2023, the Executive Committee convened on April 13, 2023. During this meeting, the Executive Committee considered the pros and cons

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[3] What happened at the conclusion of this meeting was hotly debated at trial. Defendants uniformly contend that Plaintiff pulled an "okey-doke" by orally agreeing to all substantive terms after 10 hours of negotiation, only to refuse to sign a written agreement prepared by Silver Star's counsel. Plaintiff denied that he ever agreed to a final resolution. Conversely, Plaintiff contended that Defendant Haddock threatened him by yelling that he would "come after" Plaintiff and his family and "destroy and humiliate" Plaintiff. Defendants Tompkins and Haddock denied that Defendant Haddock ever threatened Plaintiff, although they admitted that they raised their voices and may have threatened to sue Plaintiff.

The Court finds the Defendants more credible in regard to what occurred at this meeting. In addition to Plaintiff's general credibility issues, this finding is based on the following: (1) the Defendants were forthcoming and admitted that they got upset and raised their voices, in contrast to Plaintiff who essentially admitted to no wrong, (2) Plaintiff's version shifted during his two depositions and his testimony at trial, and (3) Plaintiff's version is self-serving because he uses Haddock's alleged threats to argue bad faith on behalf of the Defendants.

of both liquidation and the Pivot Plan. As a result of that analysis, the Executive Committee determined that (1) it was <u>not</u> in the best interest of stockholders to liquidate at that time, (2) it was in the best interest of stockholders to continue to undertake the Pivot Plan and (3) it was in the stockholders' best interest to begin the process of listing the company's shares on a public exchange, which they hoped to complete within 12 months.

G. <u>The Dispute Escalates</u>

On or about March 20, 2023, Plaintiff and Hartman XXI filed suit against Silver Star and its current CEO in the District Court for Harris County, Texas (hereinafter, the "Texas Lawsuit").[4] The basis of the Texas Lawsuit was the outstanding loan that Silver Star allegedly owed to Hartman XXI.

On June 22, 2023, Plaintiff met again with representatives of Silver Star, including the individual Defendants, ostensibly to negotiate the separation. At the meeting, Plaintiff voiced his desire for an annual meeting, stating that he wanted to speak to the stockholders directly. Plaintiff also mentioned that he wanted to take over the Board with a new slate of directors.[5] Significantly, Plaintiff did not mention the Texas Lawsuit at this meeting.

Defendants Tompkins and Haddock left the meeting believing that Plaintiff wanted to attempt a hostile takeover of Silver Star. Accordingly, the Executive Committee began

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[4] According to Allen Quine, a member of the Hartman XXI Board of Directors, Plaintiff never got approval to file the Texas Lawsuit. This testimony was not rebutted by Plaintiff.

[5] At trial, Plaintiff denied that he made any threats about a proxy fight or the removal of Independent Directors at this meeting. The Court finds Defendants' testimony of what occurred at this meeting to be more credible for the reasons stated above and for the additional reason that Plaintiff's actions following the meeting closely tracked his alleged statements.

discussing the possible adoption of a "rights plan[6] to prevent a hostile takeover by Allen R. Hartman" the very next day.

On July 19, 2023, Plaintiff made a formal, written request for an annual meeting. On that same day, Plaintiff, through counsel, provided Silver Star with notice of the Texas Lawsuit. Starting on July 21, 2023 and continuing through early August, Plaintiff caused several *lis pendens* to be recorded on several of the properties held by Hartman SPE, Silver Star's subsidiary.[7] The *lis pendens* interfered with Silver Star's ability to market its office building assets and put it in technical default on some of its debts, thereby jeopardizing the refinancing effort and potentially thwarting the Pivot Plan. Ultimately, Hartman SPE had to be put into bankruptcy. It took several months for the bankruptcy proceeding to result in the release of the *lis pendens*. Silver Star incurred substantial costs as a result.

In light of these events, the Independent Directors grew more apprehensive of a potential hostile takeover. Discussions continued at an August 18, 2023 Executive Committee meeting and culminated in the approval of a rights plan (the "Rights Plan"). Silver Star provided public notice of the Rights Plan by way of a Form 8-K filed with the SEC that same day.

On August 25, 2023, Plaintiff and Hartman XXI filed this lawsuit (the "Maryland Lawsuit") to compel an annual meeting.[8] On August 28, 2023, counsel for Plaintiff and Hartman

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[6] A stockholder rights plan is often referred to as a "poison pill."

[7] According to Quine, Plaintiff had not obtained the authorization of the Board of Hartman XXI to file the *lis pendens*. Plaintiff did not rebut this testimony.

[8] According to Quine, Plaintiff had not obtained authorization from the Board of Hartman XXI to include Hartman XXI in the Maryland Lawsuit. Plaintiff did not rebut this testimony and Hartman XXI was dismissed from this case.

XXI sent an email to Silver Star's counsel. Although the email was under counsel's name, Plaintiff admitted at trial that he wrote the email. In the e-mail, Plaintiff stated the following:

> Dear Gerald Haddock, Jack Tompkins and Jim Still:
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> It appears we are at a fork in the road. It would seem to me that there are only two options that are fair and equitable for both parties. One is doing a proxy contest, and the other is a global solution. Your offer to give us what we already have coming to us is a nonstarter.
>
> Regarding a proxy contest, I have hired a proxy solicitor and a law firm to oversee a proxy vote to contest Silver Star's current board of directors and appoint a new slate. The new slate of proposed directors has been selected, and they have all agreed to run. I have personally spoken with the top 10 shareholders, and they will vote for the new slate. I have phone numbers for the top 100 shareholders and will start calling them this week. The broker dealers are also unanimously in favor of a new slate with the possible exception of perhaps one half of Maloney, who you met with.
>
> . . . .
>
> If you prefer not to do a proxy contest, a better solution is for us to receive the following 5 properties:
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> 1. 3100 Timmons;
> 2. One Technology Center;
> 3. Ashford Crossing II;
> 4. 601 Sawyer; and
> 5. Preserve
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> The 5 properties will satisfy XXI's interest in Hartman SPE, XXI's common shares owned of Silver Star, XXI's OP units of Hartman XX Limited Partnership (a subsidiary of Silver Star), the XXI – Silver Star inter-company loans/advances. All Hartman's personal shares of stock in Silver Star, and all other litigated matters. Additionally, Al Hartman will resign from Silver Star's board.
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> . . . .
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> The clock is running against you. To avoid protracted litigation, it is clearly beneficial to you to resolve this matter immediately.

Defendant Haddock considered this communication to be a "greenmail" threat and a continuation of the plan Plaintiff mentioned at the June 22 meeting.

On October 4, 2023, Plaintiff was party to the filing of a Schedule 13D with the SEC which provided public notice of the aggregation of Plaintiff's shares in Silver Star with the shares of other entities and individuals, including the Hartman Family Protective Trust, Hartman XX Holdings, Inc., Hartman XXI, and some of Plaintiff's family members (collectively the "Hartman Group"). Plaintiff, alone, owned 4,614,221 shares, which represented approximately 13% of Silver Star. Following the aggregation, the Hartman Group held 5,241,860 shares, or approximately 15% of Silver Star. In the section of Form 13D for listing plans or actions, the Hartman Group expressly noted that, "other than engaging in [certain] communications, the Reporting Persons presently have no specific plans or proposals."

Silver Star's Executive Council was aware of the Schedule 13D and discussed whether it was a trigger of the Rights Plan. The Executive Council wanted to be careful, so it decided against declaring that the Schedule 13D was a trigger. Instead, on October 25, 2023, the Board amended Silver Star's bylaws (the "Bylaws") for the purpose of allowing the stockholders to elect directors by less-than-unanimous consent (hereinafter the "Amended Bylaw").

Around that same time, Plaintiff and Hartman XXI formally acknowledged some misrepresentations and improper actions in conjunction with its negotiations with Silver Star. In an affidavit filed in the Texas Lawsuit on November 10, 2023, Plaintiff admitted that many of the statements made in the August 28, 2023 e-mail were untrue. Specifically, Plaintiff admitted that he "had not in fact hired a proxy solicitor or a law firm to oversee a proxy vote for Silver Star." Plaintiff also admitted that he had not spoken to, or solicited the proxies of, the top ten stockholders. He further admitted that the top ten stockholders had not informed him that they

would "grant [him] their proxies with respect to anything, much less with respect to the election of directors." In the affidavit, Plaintiff admitted that he made the misrepresentations out of frustration with Silver Star's Executive Committee. Separately, on November 27, 2023, Hartman XXI admitted in a federal bankruptcy court filing that the *lis pendens* were improper because Hartman XXI did not have any interest in the real estate assets against which it had recorded the *lis pendens*.

On November 22, 2023, Plaintiff amended the Maryland Lawsuit, adding a claim for the immediate liquidation of Silver Star. On that same date, Silver Star initiated the written consent solicitation for, among other things, the election of Directors. The only candidates listed on the solicitation were Defendants Tompkins, Haddock and Still; Plaintiff was not included as a candidate. The solicitation gave stockholders the option of consenting to the election of the proposed slate of Directors or not; there was no option or opportunity to nominate or vote for any other candidates. The deadline for the submission of the stockholder responses (the "consents") was January 29, 2024.

One week later, on November 29, 2023, the Hartman Group filed a Form 13-D/A, which was an amendment to the Form 13-D that had been filed on October 4, 2023. This time, in the section regarding plans or actions, the Hartman Group provided notice of the Maryland Lawsuit seeking the liquidation of Silver Star.

On December 15, 2023, the Executive Committee adopted a resolution finding that the Rights Plan had been triggered. The Executive Committee subsequently realized that the resolution was a defective corporate act. Accordingly, on January 16, 2024, the Board of Directors adopted Articles of Validation, ratifying the Executive Committee resolution. Silver Star filed a Form 8-K with the SEC indicating that the Rights Plan had been triggered and that

shares would be distributed to all stockholders other than those in the Hartman Group, resulting in a dilution of Plaintiff's ownership by approximately 50%.

On January 29, 2024, this Court issued a preliminary injunction prohibiting Silver Star from tallying the consents that it had received.

III. THE NATURE OF THE CLAIMS AND DEFENSES

A preliminary question faced by the Court is the nature of the claims before it. To answer this question, the Court must analyze the remedies sought by Plaintiff. *Ver Brycke v. Ver Brycke*, 379 Md. 669, 696 (2004) (whether an action is one in law or in equity is determined by the remedies sought).

In Count I of the Fourth Amended Complaint, Plaintiff seeks declaratory and injunctive relief relating to his claim that Silver Star must commence the liquidation of its assets and cease buying new assets. In Count II, Plaintiff seeks injunctive relief "requiring Silver Star to hold an annual stockholder meeting" by a date certain. In Count III, Plaintiff seeks injunctive relief ordering Silver Star to turn over a complete stockholder ledger as required by Maryland law. In Count IV, Plaintiff seeks declaratory and injunctive relief voiding the Amended Bylaw and prohibiting Silver Star from "seeking consents for the election of directors pursuant to the Amended Bylaw." Finally, in Count V, Plaintiff seeks a declaration that the Rights Plan is void or had not been triggered and an injunction restoring his voting rights and value. In sum, Plaintiff seeks only injunctive and declaratory relief.

It is well settled that injunctive relief is equitable in nature. *Ademiluyi v. Egbuonu*, 466 Md. 80, 123 (2019). Defendants argue that, for some of the relief sought by Plaintiff – specifically, the relief sought in Count II – Plaintiff is seeking a mandamus rather than an injunction. However, this distinction is irrelevant for the purposes of determining the nature of

Plaintiff's claims because both are equitable remedies. *Id.* As for Plaintiff's claims for declaratory relief, a "suit seeking a declaratory judgment is unique, in that it is 'neither wholly a suit in equity nor wholly an action at law, [but] may take on the color of either equity or law, depending upon the issues presented and relief sought.'" *Id.* at 123 (quoting *LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 411 (2007). Notably, here, in each instance where Plaintiff seeks declaratory relief, he also seeks equitable injunctive relief. Accordingly, in the context of this case, the Court holds that Plaintiff's claims for declaratory relief are equitable in nature. *See, e.g.*, *LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392, 411 (2007) (declaratory judgment claim was equitable because plaintiff was also seeking the equitable remedy of reformation); *compare Fisher v. Tyler*, 24 Md. App. 663 (1975) (declaratory judgment claim was not equitable because it related to a legal cause of action for breach of contract).

Because equitable remedies are sought, "equitable defenses may be invoked." *Hill v. Cross County Settlements, LLC*, 402 Md. 281, 310 (2007) (citation omitted). Here, Defendants assert the equitable defenses of equitable estoppel, unclean hands, and laches, among others. Equitable estoppel is applicable when a plaintiff engaged in voluntary conduct or made a representation and the defendant relied on the conduct or representation to its detriment. *Heartwood 88, Inc. v. Montgomery Cnty.*, 156 Md. App. 333, 369 (2004). Unclean hands is applicable when one seeking relief is "guilty of unlawful or inequitable conduct with respect to the matter for which relief is sought." *Turner v. Turner*, 147 Md. App. 350, 419 (2002) (citation omitted). The defense of laches is applicable "when there is an unreasonable delay in the assertion of one's right and that delay results in prejudice to the opposing party." *Frederick Road Ltd. Partnership v. Brown & Sturm*, 360 Md. 76, 117 (2000) (citation omitted).

IV. ANALYSIS

A. Count I – Liquidation

1. The Charter's termination provision and the nature of the dispute

Section 15.2(a) of the Charter (the "Termination Provision") provides the following:

> Unless the Board of Directors has caused the Company's Common Stock to be listed or quoted for trading on an established securities exchange, including the NASDAQ, National Market System, within ten years of the termination of the Company's initial public offering, the Company shall begin the process of liquidating our assets, unless the Board of Directors has obtained the approval of a majority of our shareholders to defer the liquidation or to approve an alternate strategy. To obtain that approval, the Board of Directors shall call a Stockholders' meeting pursuant to Section 8.1 to present a proposal for the orderly disposition of the Company's assets or for an alternate strategy. The proposal will include information regarding appraisals of the Company's real estate assets. If the Stockholders do not approve the proposal presented by the Board of Directors prior to the end of ten years after the termination of the Company's initial public offering, the Board of Directors shall begin the process of liquidating the Company's assets or listing the Company's shares.

It is undisputed that Silver Star began selling shares on or around February 9, 2010. The parties dispute when Silver Star's IPO concluded such that the clock started ticking on the Termination Provision's ten-year deadline.

Plaintiff contends that the IPO concluded on April 23, 2013 when Silver Star stopped selling shares after it realized that it had failed to file certain required "post-effective amendments." Because ten years have elapsed since the conclusion of the IPO, Plaintiff requests a declaration that Silver Star "is required to liquidate its assets and wind up its operations and [ ] appropriate injunctive relief requiring it to do so."

Conversely, the Defendants contend that the IPO concluded on October 7, 2016 when Silver Star permanently stopped selling shares. The Defendants also contend that Silver Star is

not required to liquidate because it has started the process of listing the Company's shares on a public exchange. Finally, the Defendants assert the affirmative defenses of equitable estoppel and unclean hands and argue that the Plaintiff should be denied equitable relief.

2. The interpretation of the Charter and the Termination Provision

a. Rules of construction

The Supreme Court of Maryland succinctly set out the canons for the interpretation of a corporate charter in the case of *Impac Mortgage Holdings, Inc. v. Timm*, 474 Md. 495, 505-508 (2021) (citations omitted):

> A corporate charter is considered to be a contract between the corporation and its shareholders. Thus, when interpreting a charter provision . . . a court is essentially construing a provision of a contract between the corporation and the shareholders.
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> . . . .
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> Maryland courts take an "objective" approach to the interpretation of contracts. Under that approach, the court's inquiry is initially bounded by the "four corners" of the agreement. As with the interpretation of a statute, the court does not construe particular language in isolation, but considers that language in relation to the entire contract. The court is to give effect to the plain meaning of the contract, read objectively, regardless of the parties' subjective intent at the time of contract formation. In other words, when the contract language is plain and unambiguous, "the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant."
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> Thus, the initial step in the objective approach to contract interpretation is to determine whether the contract's meaning is plain and unambiguous. If that is so, the court's task – at least as to the interpretation of the contract – is at an end.
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> Ambiguity arises when a term of a contract, as viewed in the context of the entire contract and from the perspective of a reasonable person in the position of the parties, is susceptible of more than one meaning. If a contract provision is ambiguous, "the narrow bounds of the objective approach give way," and the court

> may consider extrinsic evidence to ascertain the mutual intent of the parties. In that effort, the court is to consider admissible evidence that illuminates the intentions of the parties at the time the contract was formed. When addressing an ambiguous provision in a contract, the court "will search to find mutuality" and not a "self-serving, unilateral construction" of the contract.
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> . . . The parties' construction of the contract before the controversy arises can be "an important aid," as can be the usage of the term in the parties' trade.

b. Construction of the phrase "termination of the Company's initial public offering"

The term "initial public offering" is not defined in the Charter. According to the expert testimony presented in this case, it is also not defined in any SEC statute or regulation; rather, it is a "term of art" in the securities field. Further complicating matters, the sale of securities for a public non-traded REIT is different than for a traditional security. Specifically, while an IPO for a traditional security would be a single event at which a certain number of shares becomes immediately available for trade on a public market, the sale of shares of a public non-traded REIT are conducted over time on a "continuous" basis. Indeed, Silver Star's initial registration, which it stopped after a little over 26 months, would have been valid for 3 years, and possibly longer. For all of these reasons, the Court finds the term "initial public offering" and, hence, the phrase "termination of the Company's initial public offering" to be ambiguous.

As directed by the Supreme Court in *Impac*, the next step is to look at extrinsic evidence to determine what the parties meant by the term. Unfortunately, neither side presented any evidence as to what was intended by the term at the time it was drafted in 2009. There was, however, an abundance of evidence presented at trial regarding the parties' interpretation of the meaning of the term prior to the controversy between the parties. For years, Silver Star indicated in official filings with the SEC that its IPO ended on April 25, 2013. This interpretation

continued even after the dispute within Silver Star manifested. As late as November 20, 2023, Silver Star indicated in an SEC filing that the IPO closed on April 25, 2013. Importantly, it was not until after the Second Amended Complaint was filed on November 22, 2023 that Silver Star took the position that the IPO concluded on October 7, 2016. These facts indicate that the parties understood the termination of the IPO to have been April 25, 2013.

An IPO termination date of April 25, 2013 would also more effectively fulfill the purpose of the Termination, which was to provide protection to investors by countering the provisions in the Charter that prohibited redemption or trading of shares. In the prospectus that was issued when the second registration was approved on July 6, 2013, Silver Star informed potential investors that the IPO had terminated on April 25, 2013. The vast majority of investors bought after this representation was made, meaning that those investors bought with the "assurance" that they would either get liquidity or some kind of return by April 25, 2023.

For all of these reasons, the Court finds by a preponderance of the evidence that the appropriate construction of the term "termination of the Company's initial public offering" means, under these facts, April 25, 2013. Ten years from that date was April 25, 2023. According to the first sentence of the Termination Provision, Silver Star should have begun liquidating its assets almost two years ago.

c. Construction of the Termination Provision's last sentence

The Defendants make the alternative argument that, regardless of when the IPO terminated, Silver Star does not have to liquidate its assets because it has "begun the process of . . . listing the Company's shares." The Defendants base this argument on the last sentence of the Termination Provision, which provides the following:

> If the Stockholders do not approve the proposal presented by the Board of Directors prior to the end of ten years after the

> termination of the Company's initial public offering, the Board of Directors shall begin the process of liquidating the Company's assets or listing the Company's shares.

The Defendants contend that, although they have not gotten the approval of the stockholders, they nevertheless have the option of beginning the process of listing the Company's shares in lieu of liquidation. The Court does not agree with the Defendants' construction of this part of the Termination Provision.

As set forth by the Supreme Court in *Impac*, proper contract construction requires the Court to look at the contract as a whole. A corollary is that "[c]onstruing the contract as a whole requires that effect be given to each clause to avoid an interpretation which casts out or disregards a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed." *Lithco Contracting, LLC v. XL Insurance America, Inc.*, 478 Md. 385, 403 (2024).

The interpretation urged by the Defendants would "cast out" a critical portion of the Termination Provision. Specifically, the Defendants' interpretation that the Board could avoid liquidation merely by "beginning the process" (whatever that means) of listing the Company's shares would render meaningless the clause in the first sentence that mandates liquidation if the stock had not already been listed on a public exchange.

The Court finds that the correct interpretation of the Termination Provision, and the construction that renders all portions of the Termination Provision meaningful, is that the final clause is not applicable unless the Board of Directors first took the steps outlined in the second sentence of the Termination Provision. Specifically, the Board of Directors must have (1) called an annual meeting and (2) presented at that annual meeting "a proposal for the orderly

disposition of the Company's assets or for an alternate strategy." This interpretation renders all clauses meaningful.

Here, it is undisputed that the Silver Star Board has not called an annual meeting and has not presented a proposal to the stockholders. Accordingly, the last sentence of the Termination Provision is not available to the Defendants and Silver Star cannot avoid liquidation merely by beginning the process of listing its shares.

3. The appropriate equitable remedy, if any

The Court finds merit in Plaintiff's claim based upon its construction of the Termination Provision and the facts of this case. Accordingly, it is the Court's obligation to determine what remedy, if any, is appropriate. In making this determination, the Court considers the following additional facts.

a. The Board of Directors has determined that liquidation would not be in the best interests of the stockholders

At a meeting on April 13, 2023, the Executive Committee and the CEO discussed the pros and cons of liquidation and the Pivot Plan. The CEO presented a detailed analysis showing that liquidation would likely result in unfavorable returns for shareholders, primarily due to depreciation in real estate valuations, taxes, and operational costs. Conversely, the analysis showed that the Pivot Plan, aimed at achieving a public listing, promised superior value and liquidity. Recognizing the responsibility to act in the best interests of Silver Star's stockholders, the Executive Committee evaluated the options and opted for the Pivot Plan over liquidation.

b. Maryland courts regard dissolution as a remedy of last resort

Upon petition, the Maryland General Corporation Law ("MGCL") authorizes a circuit court to order the dissolution of a Maryland corporation. MGCL §§ 3-413 and 3-414. However, the Supreme Court of Maryland has consistently held that less drastic remedies should be

explored before dissolution is ordered. *Eastland Food Corporation v. Mekhaya*, 486 Md. 1, 28-29 (2023) ("before considering dissolution, courts should first consider less drastic equitable remedies"); *Bontempo v. Lare*, 444 Md. 344, 358 (2015) ("dissolution should be avoided where less drastic remedies are available"); *Lerner v. Lerner*, 306 Md. 771, 789-90 (1986) ("Winding-up a corporation is so drastic a remedy that it is not ordered if the wrong may be adequately repaired by milder relief").

c. Stockholder approval of liquidation/dissolution is generally required

Generally, stockholder approval is required for the voluntary dissolution of a Maryland corporation. MGCL § 3-403(e). Similarly, Silver Star's Charter requires stockholder approval of the Board's decision to liquidate and dissolve the company. Indeed, Plaintiff testified at trial and in his deposition that Silver Star's stockholders must approve the liquidation of the company's assets.

d. Equitable estoppel considerations

As noted above, the affirmative defense of equitable estoppel is applicable when a plaintiff engaged in voluntary conduct and the defendant relied on the conduct to its detriment. *Heartwood 88, Inc.*, 156 Md. App at 369. Here, Plaintiff took certain positions and failed to take certain actions that, if nothing else, lulled the Defendants into non-action to their "detriment." Specifically, Plaintiff unilaterally terminated the effort to get Silver Star listed on a public exchange after years of effort. Then, Plaintiff's plan to merge Silver Star into Hartman XXI failed after years of negotiations, despite the fact that he was CEO of both companies. All the while, and perhaps most importantly, Plaintiff failed to mention the termination deadline to the Board during his entire tenure as CEO of the company.

After the debt refinancing and merger initiatives fell through, the Defendants were understandably focused on saving the company from economic crisis. It was not until January of

2023 that the Board recognized the significance of the looming deadline. Both through his actions and his inaction, Plaintiff effectively hamstrung Silver Star's ability to satisfy the requirements of the Termination Provision to avoid liquidation in the short time available.

e. Immediate liquidation is not the appropriate remedy

For all the reasons set forth above, the Court rules that the "drastic" remedy of immediate liquidation is not the appropriate remedy in this situation. As set forth below, the Court will grant other equitable relief that addresses this Count.

B. <u>Count II – Annual Stockholder Meeting</u>

Plaintiff asks this Court to issue an order that Silver Star is required to hold an annual meeting by a date certain.

Section 8.1 of the Charter provides the following, in relevant part:

> There shall be an annual meeting of the Stockholders, to be held upon written notice at such time (at least 30 days after the delivery of the annual report) and convenient location, within or outside of the State of Maryland, as shall be determined by or in the manner prescribed by the Bylaws, for the election of the Directors, to review and discuss the business and affairs of the Company and the Operating Partnership, and for the transaction of any other business within the powers of the Company. The Directors shall take reasonable steps to ensure that the annual meeting is held.

Article II, Section 2 of Silver Star's Bylaws provides the following: "An annual meeting for the election of directors shall be held on a date and time set by the Board of Directors in each year commencing with calendar year 2010."

Although the Charter and the Bylaws expressly call for an Annual Meeting, Defendants argue that the requested relief should be denied for three reasons. First, the consent solicitation served as an annual meeting. Second, the claim is moot because they have offered to have a meeting in 2025. Third, Plaintiff "should be equitably estopped from demanding an annual

shareholder meeting due to his failure during his leadership to hold a single meeting of shareholders."

The Court finds no merit to any of Defendants' arguments. First, the consent solicitation cannot serve as a substitute for an annual meeting because (1) the Amended Bylaw does not provide that a consent solicitation is a substitute for an annual meeting; (2) the consent solicitation did not satisfy the Charter provision regarding the review and discussion of "the business and affairs of the Company" that is to take place at an annual meeting; and (3) by its own terms, the consent solicitation was for fiscal year 2023, which has passed. Second, the claim is not moot because the equivocal offers made by two of the Defendants during their testimony at trial are not binding on Silver Star and, therefore, do not resolve Plaintiff's claim.[9] Finally, as to the equitable estoppel defense, even assuming that Plaintiff was at fault for not having a meeting during his leadership, Defendants have failed to show any prejudice relating to Plaintiff's actions or failure to act.

In Maryland, there is an express public policy that corporations hold annual meetings. *See* MGCL § 2-501(a). Further, an annual meeting would benefit all of Silver Star's stockholders, not just Plaintiff, especially in this time of upheaval within the company. Accordingly, the Court finds that the equities favor Plaintiff on this claim and, as discussed more fully below, will order Silver Star to hold a traditional annual meeting within a certain time.

C. <u>Count III – Stockholder Ledger</u>

Prior to trial, this claim was dismissed without prejudice.

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[9] At trial, Defendant Haddock testified that the Executive Committee has "considered" having an annual meeting in August 2025. On cross-examination, Defendant Haddock testified that the annual meeting could be a consent solicitation or a traditional annual meeting. Defendant Tompkins also testified to some willingness to have a traditional annual meeting.

D. Count IV – Amended Bylaw

Plaintiff seeks a declaration that the Amended Bylaw is void and unenforceable. Plaintiff also seeks an order permanently enjoining "Silver Star from seeking consents for the election of directors pursuant to the Amended Bylaw." As noted, by order dated January 29, 2024, the Court issued a preliminary injunction prohibiting Silver Star from tallying the consents that it had received.

The Defendants have appealed the preliminary injunction. The appeal has been fully briefed and argued.

The Court is prepared to issue its ruling on this claim, including whether the Defendants' amended the Bylaw in bad faith. However, out of an abundance of caution, the Court shall refrain from ruling on this claim until the Appellate Court of Maryland issues its decision. *See Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 63-66 (2013) (circuit court should not exercise jurisdiction in a way that would affect the subject matter of an appeal).

E. Count V – The Rights Plan

1. Background

Pursuant to the Rights Plan, a stockholder (the "Acquiring Person") is not permitted to exceed 10% ownership and then take any action to change or influence control of the company. If both conditions are met, all other stockholders would be provided with one share for every share that they owned, effectively cutting the Acquiring Person's stake by approximately 50%.

The Rights Plan excludes those stockholders, such as Plaintiff, who already held more than a 10% ownership stake, provided the stockholder does not acquire additional shares. Importantly, the Rights Plan provides for the aggregation of shares across stockholders if they are "acting in concert," making all stockholders so acting the "beneficial owners" of each other's

shares. The Rights Plan defines "acting in concert" as exchanging information, attending meetings, and coordinating efforts to influence corporate control.

On December 15, 2023, the Executive Committee determined that the Rights Plan had been triggered by Plaintiff. Specifically, the Executive Committee determined that Plaintiff had acquired additional shares by acting in concert with several other stockholders, as evidenced by the Schedule 13D and Schedule 13D/A. The Executive Committee also determined that the Acquiring Persons, including Plaintiff, had taken an action to change or influence control of the company by way of, among other things, the filing of the Second Amended Complaint seeking liquidation. On January 16, 2024, the Board ratified the Executive Committee's actions and issued shares to all stockholders other than those in the Hartman Group, including Plaintiff.

2. Plaintiff's claims

In regard to the Rights Plan, Plaintiff seeks a variety of declaratory and equitable relief. As a threshold matter, Plaintiff seeks a declaration that the Rights Plan is void and unenforceable because it was adopted for improper purposes. Plaintiff also seeks a declaration that the Rights Plan was not triggered on November 29, 2023. Plaintiff also seeks a declaration that the Rights Plan did not become operative until the Articles of Validation were adopted on January 6, 2024 so Silver Star could not rely on prior events to legally declare the Rights Plan triggered. Finally, Plaintiff requests that the Court "enter appropriate relief to restore the voting rights and value to all stockholders who were negatively affected."

3. The Rights Plan was enacted in good faith

Maryland law expressly provides that a corporation's board of directors has the authority to define, adopt and implement a stockholder rights plan. MGCL § 2-201(c). Further, the MGCL permits a stockholder rights plan that includes "any limitation, restriction, or condition that precludes, limits, invalidates, or voids the exercise, transfer, or receipt of the rights, options,

or warrants by designated persons or classes of persons in specified circumstances". MGCL § 2-201(c)(2)(i).

Despite express statutory authorization, Plaintiff claims that the Rights Plan should be declared void because it was adopted in bad faith. Maryland law presumes that directors act in good faith and in the best interests of the corporation. MGCL § 2-405.1(i)(2). To rebut this presumption, a party must provide clear evidence of bad faith. *Mona v. Mona Elec. Group, Inc.*, 176 Md. App. 672, 696 (2007).

Plaintiff has failed to rebut the presumption. Prior to the adoption of the Rights Plan, Plaintiff had engaged in a series of actions that reasonably led the Defendant Directors to believe that he intended a hostile takeover and liquidation of the company. Indeed, Plaintiff had announced his plan at the June 22, 2023 meeting and he then took affirmative steps to achieve his goal. First, he and Hartman XXI initiated the Texas Lawsuit. Next, Plaintiff and Hartman XXI caused several *lis pendens* to be issued against properties owned by Silver Star's subsidiary. The *lis pendens* interfered with Silver Star's ability to market its office building properties, thereby jeopardizing both Silver Star's refinancing efforts and the Pivot Plan. The *lis pendens* ultimately caused Silver Star to put its subsidiary into bankruptcy, costing Silver Star both time and money. Importantly, Plaintiff took all these actions all while he was still a director of Silver Star and, thus, arguably still owed a fiduciary duty to Silver Star's stockholders.

The facts also show that the Defendants were deliberate in their consideration of the Rights Plan. The Executive Committee first began discussing the possibility of a rights plan on June 23, 2023, the day after Plaintiff announced his intent to seize control of Silver Star by replacing the Independent Directors with his own nominees. The Executive Committee

continued to consider a possible rights plan for almost two months, and then adopted the Rights Plan only after finding out about the *lis pendens*.

In light of these facts, the Court finds that Plaintiff has failed to show Defendants acted in bad faith in enacting the Rights Plan.

4. The Board was justified in declaring that the Rights Plan had been triggered

At closing argument and in his post-trial brief, Plaintiff asserted that the Rights Plan had not been triggered as a matter of law. Specifically, Plaintiff argued that the Rights Plan was (1) too broad to be legally enforceable and (2) there had not been a triggering event because Plaintiff's lawsuit could not legally serve as a trigger for the Rights Plan. In response to Defendants' Motion for Summary Judgment on this Count, Plaintiff had argued "the determination that a [triggering event] occurred was not made in good faith." The Court shall address all three arguments.

a. Plaintiff's legal arguments fail.

Plaintiff primarily cited to Delaware cases for his assertions that the Rights Plan was overly broad and that the filing of a lawsuit seeking liquidation cannot serve as a trigger of the Rights Plan.[10] The Plaintiff did not cite, and the Court could not find, any Maryland cases analyzing these issues. However, Maryland statutory law expressly provides that a board has "sole" discretion to set the terms of a rights plan. MGCL § 2-201(c). Further, § 2-201(c) does not limit a board's discretion in regard to what can serve as a trigger. Accordingly, Plaintiff has not shown as a matter of law that the Rights Plan is overbroad or that a lawsuit seeking liquidation cannot serve as a trigger.

[10] The sole exception is Plaintiff's citation to *Eastern Food Corp. v. Mekhaya*, 486 Md. 1, 71 (2023) (concurring opinion) for the basic proposition that a stockholder suit against a corporation can be direct or derivative.

b. The presumption that Defendants acted in good faith in determining that there was a trigger has not been rebutted

At trial, Defendant Tompkins testified that the Executive Committee was not looking to find a trigger to the Rights Plan; rather, it was the Executive Committee's hope that the passage of the Rights Plan would be enough to deter Plaintiff. This testimony is corroborated by the fact that the Board refrained from declaring a trigger of the Rights Plan for months despite the Plaintiff's hostile, concerted activities. On August 28, 2023, Plaintiff, acting on behalf of himself and Hartman XXI, sent the e-mail to Silver Star threatening a proxy battle if Silver Star did not hand over 5 properties. On October 4, 2023, the Hartman Group filed the Schedule 13D, which provided public notice of the aggregation of their shares. On November 22, 2023, Plaintiff, with Hartman XXI, amended the Maryland Lawsuit to add a claim for the immediate liquidation of Silver Star. And then, one week later, on November 29, 2023, the Hartman Group filed the Form 13-D/A in which it essentially admitted that its members were acting in concert in seeking the liquidation of Silver Star. In light of these facts, Plaintiff has failed to rebut the presumption that the Defendants acted in good faith.

At closing arguments, Plaintiff argued that a triggering event had to be a single event and could not be an accumulation of events. Plaintiff provided no Maryland law to support his proposition. However, even assuming that Plaintiff is correct, the Court finds that the filing of the Schedule 13D/A by the Hartman Group was sufficient to trigger the Rights Plan in good faith. As noted above, Plaintiff and the other members of the Hartman Group all but admitted that they were "acting in concert" to force the liquidation of Silver Star in the Schedule 13D/A.

5. The Board validly ratified the actions of the Executive Committee

The Defendants concede that the Executive Committee's adoption of the Rights Plan and resolution that the Rights Plan had been triggered were defective corporate acts. Plaintiff argues

that, because all the alleged triggering events occurred prior to the Board's ratification, none could serve as a legal trigger of the Rights Plan. Maryland law expressly allows for corporations to correct defective acts taken by a board through ratification. MGCL § 2-703(b)(1). Once the defective act is ratified, the act is treated as though it was *always* correct, thus making its enforcement retroactive. *Id.* (emphasis added). Accordingly, Plaintiff's argument fails.

6. Summary

The Court finds that the Rights Plan was legally adopted and that the Board was not acting in bad faith in finding that Plaintiff had triggered the Rights Plan. Accordingly, Plaintiff's requests for relief in regard to the Rights Plan are **DENIED**.

IV. REMEDY

The "fundamental purpose of equitable jurisdiction [is] to grant relief when, and only when, the law courts could not, or would not, render a complete and adequate remedy for the wrong done." *Manning v. Potomac Elec. Power Co.*, 230 Md. 415, 422 (1963). As a result, "trial courts, sitting as courts of equity, are granted broad discretionary authority to issue equitable relief." *Sieglein v. Schmidt*, 447 Md. 647, 674 (2016) (citation omitted). "[A] party ordinarily has no legal entitlement to an equitable remedy, and [ ] any 'right' to equitable relief is subject to counter equities that may be relevant." *Noor v. Centreville Bank*, 193 Md. App. 160, 175 (2010) (citations omitted).

The Court finds some merit to two of the claims addressed in this Memorandum: Plaintiff's claim regarding the Termination Provision and Plaintiff's claim regarding an annual meeting. After considering all of the facts of this case, the Court finds the following remedy to be appropriate:

1. Silver Star shall be ordered to hold an annual meeting within 6 months of the date of this Memorandum and accompanying Order. At that annual meeting, the stockholders must

be given a binary choice between liquidation and deferring liquidation for the purpose of executing an alternate strategy. The choice garnering the majority of shares at the meeting shall prevail. There must be a quorum of shares for the vote to be valid.

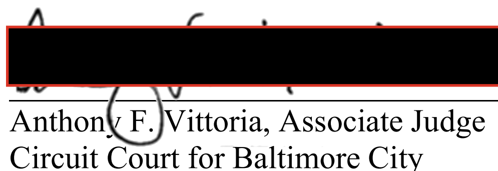
2. Silver Star shall provide stockholders at least 45 days notice of the annual meeting. That notice shall expressly indicate that a vote will take place to either liquidate the company's assets or defer liquidation for the purpose of executing an alternate strategy. In regard to liquidation, the notice shall contain the following language:

> Silver Star's Charter calls for the liquidation of its assets within 10 years of the termination of its initial public offering, unless (1) the company's shares have already been listed on a public stock exchange, or (2) the stockholders have approved a deferral of liquidation and/or an alternate strategy.
>
> A court has determined that Silver Star's initial public offering concluded on April 25, 2023, meaning that the ten-year deadline has passed.
>
> Accordingly, at this annual meeting, you will have the opportunity to vote your shares for the liquidation of the company's assets (with the net proceeds of that liquidation distributed to the stockholders) <u>or</u> for the deferral of liquidation for the purpose of executing an alternate strategy.

3. To the extent that the stockholders do not approve the deferral of liquidation <u>or</u> Silver Star does not hold an annual meeting with a quorum of shares within six months, Silver Star must proceed with the orderly liquidation of its assets.

A separate Order for injunction relief shall be entered.

January 21, 2025



Anthony F. Vittoria, Associate Judge
Circuit Court for Baltimore City