Circuit Court for Baltimore City
Case No. 24-C-23-003722

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2441

September Term, 2024

ALLEN R. HARTMAN

v.

SILVER STAR PROPERTIES REIT, INC., ET AL.

Zic,
Ripken,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: June 26, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On this appeal from a judgment of the Circuit Court for Baltimore City, the issue is whether a "Rights Plan," sometimes referred to as a "Poison Pill," can be enforced against a stockholder when the event that triggers application of the Rights Plan is the stockholder's effort to enforce a provision in the company's charter requiring liquidation. We answer that question in the negative and, therefore, reverse the judgment of the circuit court and remand for further proceedings.[1]

BACKGROUND

Appellant is Allen R. Hartman, a stockholder in Silver Star Properties REIT,[2] Inc. ("Silver Star"), Appellee. Additional Appellees are Gerald Haddock, James Still, and Jack Tompkins, comprising the Executive Committee of the Board of Directors of Silver Star ("Appellee Directors" or "Independent Directors"). Silver Star, a Maryland corporation, was formed in 2009.

[1] As stated by Hartman, the questions are:

> I. As a matter of law, can the filing of an amended lawsuit by a stockholder to enforce the terms of a corporation's charter and the reporting of that lawsuit in a Schedule 13D filed with the SEC trigger a poison pill?
>
> II. As a matter of law, is a poison pill overbroad and therefore invalid when it prohibits normal communications among stockholders by means of an acting in concert provision?

[2] The Silver Star Articles of Incorporation state that "REIT" means "a 'real estate investment trust' as defined in Section 856 of the [Internal Revenue] Code and applicable Treasury Regulations." Silver Star was originally called Hartman Short Term Income Properties XX, Inc. Its name was changed in 2023.

The circuit court made extensive findings of fact, none of which are challenged as clearly erroneous. We shall borrow liberally from the circuit court's fact findings. The "Background" section of the court's memorandum opinion provides a helpful explanation of public non-traded REITs such as Silver Star:

> 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. <u>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.</u>[3] Pursuant to this provision, stockholders had

---

[3] Section 15.2(a) of the Silver Star corporate charter ("DURATION AND TERMINATION OF THE COMPANY") provides:

> (a) 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.

> 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.

(Emphasis added.)

Although there was a dispute as to when the initial public offering had been completed, the court found that the date was April 25, 2013, more than ten years before the events in question, and that finding is not at issue in this appeal.

Silver Star owned and managed Class B office space in Houston, Dallas, and San Antonio, Texas. From Silver Star's inception until October 2022, Hartman was its President, Chief Executive Officer, and Chairman of the Board and "remains a Director and stockholder of Silver Star."

The COVID-19 lockdowns in 2020 wreaked havoc on the commercial real estate market because of the sudden and largely unanticipated collapse in demand for office space that those lockdowns caused. Silver Star was not immune to the market dislocations that ensued. The company's financial health and liquidity were called into question, and Hartman's actions in attempting to address those concerns helped lead to his ouster from corporate control.

Under Hartman's leadership, Silver Star obtained a two-year single-asset-single-borrower (SASB) loan from Goldman Sachs to address short-term liquidity requirements. In June 2022, Goldman Sachs informed Silver Star that unfavorable market conditions meant that it would be unable to refinance the loan. The circuit court stated that "[c]oncerns regarding rising debt financing costs and cash-flow shortages compelled the Board to vote to suspend distributions to the stockholders." (Footnote omitted.)

In August 2022, the Directors received an anonymous email, containing several allegations of wrongdoing by Hartman. An internal investigation revealed that Hartman had taken more than $200,000 in distributions after the Board of Directors had suspended all distributions.

The circuit court described the situation confronting the Silver Star Board in the fall of 2022 as follows.

> 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,[4] (3) Silver Star's cash flow was worse than expected and (4) [Hartman] had improperly received funds without the Board's approval.

As the circuit court found, in order to address these problems, the Board took its first step in limiting Hartman's role, "transition[ing]" him out of his role as CEO and into the position of Executive Chairman of the Board; it hired a new CEO; and it formed an Executive Committee, comprised of the three Appellee Directors. The Executive Committee decided to implement a "Pivot Plan," whereby Silver Star would sell off its

[4] Merging Silver Star into Hartman XXI offered a solution to the problem of "lock-in." Hartman XXI, unlike Silver Star, permitted stockholders to redeem their shares and did not have a hard liquidation date. In the court's words, "merging Silver Star into [Hartman] XXI would provide Silver Star stockholders an alternate vehicle for liquidity while also providing [Hartman] an extended period of time to fulfill his goal of taking a company public."

office building inventory and, instead, purchase self-storage facilities, which it intended to lease. Hartman opposed this "Pivot Plan."

The Executive Committee attempted to negotiate Hartman's separation from the company. Those negotiations failed, however, and in early March 2023, the Executive Committee removed Hartman as Executive Chair of the Board. Later the same month, Hartman filed an action against Silver Star in a Texas state court, seeking to collect a loan that Hartman XXI previously had extended to Silver Star.[5]

By this time, the relationship between Hartman and the Independent Directors had become acrimonious. In a June 2023 meeting, Hartman told the Board that he wanted them to call an annual meeting so that he could address the stockholders directly. He further voiced a desire to elect a new Board. He did not mention the Texas lawsuit, notice of which had not yet been served on the Independent Directors. As found by the circuit court, "[Appellees] Tompkins and Haddock left the meeting believing that [Hartman] wanted to attempt a hostile takeover of Silver Star. Accordingly, the Executive Committee began discussing the possible adoption of a 'rights plan to prevent a hostile takeover by Allen R. Hartman' the very next day." (Footnote omitted.)

In July 2023, Hartman submitted a formal, written request for an annual meeting. At the same time, his counsel provided Silver Star with notice of the Texas lawsuit. Again as found by the circuit court, during a three-week period extending into early August,

[5] The circuit court found that, beginning in 2020, Hartman XXI had extended unsecured loans in the amount $17,168,000 to Silver Star.

Hartman, purporting to act on behalf of Hartman XXI, "caused several *lis pendens* to be recorded on several of the properties held by Hartman SPE, Silver Star's subsidiary." Hartman later acknowledged that there was no valid legal basis for doing so.[6] The filing of the *lis pendens* clouded title to properties that Hartman SPE wanted to sell, "potentially thwarting the Pivot Plan[,]" and it was obliged to file for bankruptcy. Although Hartman SPE ultimately was able to obtain releases of the *lis pendens*, it incurred substantial costs and months of delay in doing so.

On August 18, 2023, the Executive Committee approved a Rights Plan (i.e., Poison Pill), parts of which are reproduced in Appendix A. As discussed below, the Rights Plan in question, when implemented, would mean that stockholders other than Hartman could be issued one share of stock for every share that they owned, effectively diluting Harman's ownership interest. This is known as a "flip-in" right. At the same time, Silver Star filed a Form 8-K with the SEC, declaring publicly the adoption of the Rights Plan. Subsequently, the Board of Directors ratified the adoption of the Rights Plan.

On August 25, 2023, Hartman filed a complaint in circuit court against Silver Star and the directors who comprised the Board's Executive Committee, the Appellee Directors, seeking an injunction compelling an annual shareholders' meeting as required by Maryland law. Three days later, Hartman sent an email, under counsel's name but which Hartman later admitted he had written, imposing a series of demands on Appellee Directors as a

[6] In a federal bankruptcy court filing, Hartman XXI "admitted" 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*."

condition to "avoid protracted litigation[.]" Director "Haddock considered this communication to be a 'greenmail' threat and a continuation of the plan" Hartman had mentioned at a meeting convened several months prior.[7]

On August 28, 2023, the Executive Committee amended Silver Star's bylaws to allow shareholders to elect directors without a meeting if a quorum of shareholders consented in writing.

On October 4, 2023, Hartman filed a Schedule 13D with the SEC, providing "public notice of the aggregation of [Hartman'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 [Hartman's] family members (collectively the 'Hartman Group')." At that time, the Hartman Group indicated on the Schedule 13D that "other than engaging in [certain] communications, the Reporting Persons presently have no specific plans or proposals."[8]

The Executive Committee did not, at that time, determine that the filing of the Schedule 13D was a triggering event. Instead, the Silver Star Board amended its bylaws "for the purpose of allowing the stockholders to elect directors" by a quorum of shareholders without a meeting

[7] "The term 'greenmail' refers to the practice of buying out a takeover bidder's stock at a premium that is not available to other shareholders in order to prevent the takeover." *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 956 n.13 (Del. 1985).

[8] "**Item 4. Purpose of Transaction.**" from the Schedule 13D is reproduced in Appendix B.

In an affidavit filed in the Texas lawsuit on November 10, 2023, Hartman admitted that many of the statements made in the August 28, 2023 greenmail email were untrue.[9] As stated earlier in footnote 6, several weeks later, 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 October 19, 2023, Hartman filed a First Amended Complaint adding Hartman XXI, Inc. as an additional plaintiff.[10] On November 22, 2023, Hartman filed a Second Amended Complaint, seeking an injunction requiring the liquidation of Silver Star pursuant to Section 15.2 of its corporate charter because its stock was not listed or quoted on a securities exchange within the time period stated in Section 15.2(a) of the charter. 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 Appellees Tompkins, Haddock and Still.

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. In the section regarding plans or actions, the Hartman Group provided notice of the Maryland lawsuit

[9] In that email, Hartman had averred that he had hired a proxy solicitor and had taken substantial steps in convincing large stockholders to grant him their proxies for the purpose of electing new Directors.

[10] Hartman is the CEO of Hartman XXI. A member of the Board of Directors of Hartman XXI, Allen Quine, later testified that Hartman failed to obtain authorization from its Board to include Harman XXI as a party in this action, and because Hartman did not rebut Quine’s testimony, the court dismissed Hartman XXI from the case. Hartman XXI is not a party in this appeal.

seeking the liquidation of Silver Star pursuant to Section 15.2(a) of the charter.[11] In response, the Executive Committee, on December 15, 2023, passed a resolution finding that the Rights Plan had been triggered. One month later, the Silver Star Board ratified that resolution. As a consequence, the value of Hartman's interest in Silver Star was reduced by approximately half.

---

[11] The amended Schedule 13D/A, filed November 29, 2023, contained the following:

> **Item 4. Purpose of Transaction.**
>
> Item 4 of the Schedule 13D is hereby amended to disclose that, on November 22, 2023, Allen R. Hartman and Hartman vREIT XXI, Inc. (collectively, the "Plaintiffs") filed a Second Amended Complaint for Declaratory and Preliminary and Permanent Injunctive Relief (the "Second Amended Complaint") in the Circuit Court for Baltimore City, Maryland (Case No. 24C23003722) against Silver Star and the Executive Committee of its Board of Directors (collectively, the "Defendants"). The Second Amended Complaint adds a fourth count (styled as Count I) pursuant to which the Plaintiffs have asked the court to compel the Defendants to comply with Section 15.2(a) of the Third Amended and Restated Articles of Incorporation of Silver Star, as corrected, by liquidating Silver Star's assets. Section 15.2(a) requires Silver Star to begin the process of liquidating its assets if, within 10 years of the termination of its initial public offering, Silver Star's Board of Directors (the "Board") has not caused Silver Star's common stock to be listed or quoted for trading on an established securities exchange unless the Board has obtained the approval of a majority of Silver Star's stockholders to defer the liquidation or approve an alternate strategy. In its periodic reports filed with the SEC, Silver Star has disclosed that its initial public offering terminated on April 25, 2013. As of April 25, 2023, the shares of Silver Star's common stock were not listed or quoted for trading on an established securities exchange and the Board had not obtained the approval of a majority of Silver Star's stockholders to defer the liquidation or approve an alternate strategy.

On January 29, 2024, the circuit court granted Hartman's motion for a preliminary injunction, preventing implementation of the bylaw amendment because it violated Maryland law. Appellees in the instant matter noted an interlocutory appeal from the January 29, 2024 ruling. This Court concluded that the bylaws amendment was authorized under the Silver Star corporate charter, and on April 9, 2025, we reversed and remanded with directions to the circuit court to dissolve the injunction. *Silver Star Props. REIT, Inc. v. Hartman*, No. 2428, Sept. Term, 2023 (filed Apr. 9, 2025) ("*Hartman I*").

While the appeal was pending, on January 30, 2024, Hartman filed his Third Amended Complaint in which he included a claim that the Poison Pill had not been triggered and was otherwise unenforceable, later amended on March 27, 2024 by the Fourth Amended Complaint, in which he cleaned up the allegations. The Fourth Amended Complaint contained five counts. Count I requested declaratory and injunctive relief effecting the liquidation of Silver Star; Count II requested an injunction to require Silver Star to hold a stockholders' meeting; Count III requested the right to inspect books and records of Silver Star; Count IV requested a ruling that the amended bylaw was void; and Count V requested declaratory and injunctive relief prohibiting enforcement of the Rights Plan.

In November 2024, the court conducted a six-day bench trial. The court ruled (1) in favor of Appellees on Count I (upholding the liquidation provision but finding that Hartman was equitably estopped from enforcing the liquidation provision), (2) in favor of Hartman on Count II (despite the amended bylaw, ordering an annual stockholder meeting to be held),[12] (3) in favor of Appellees on Count V (allowing enforcement of the Poison Pill), and (4) reserved judgment on Count IV (reserving ruling on unlawfulness of the amended bylaw pending a decision on the interlocutory appeal). Because the court ruled that Silver Star had to hold an annual meeting by a specified date and held Court IV sub curia, the judgment was not final. The court certified its decision as final for purposes of appeal under Maryland Rule 2-602.[13]

The Circuit Court's Ruling

The circuit court began by noting that, under the Rights Plan, an "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," the court observed, "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 does not penalize stockholders who already hold a 10% or greater ownership stake, unless such stockholders run afoul of the "acting-in-concert" provision; in that case, all stockholders

---

[12] Although the circuit court agreed with Hartman's interpretation of the liquidation provision in the corporate charter (Section 15.2), it determined, for equitable reasons, that "the 'drastic' remedy of immediate liquidation is not the appropriate remedy in this situation." Instead, the court ordered that Silver Star hold a stockholders meeting in which the stockholders would be "given a binary choice between liquidation and deferring liquidation for the purpose of executing an alternate strategy." The court further ordered that, "[t]o the extent that the stockholders do not approve the deferral of liquidation or 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." (Emphasis omitted.)

[13] Prior to trial, Count III (which requested that the Board be required to allow Hartman to inspect and copy the ledger of stockholders) was dismissed without prejudice. It is not at issue in this appeal.

determined to be acting in concert are deemed to be Acquiring Persons, and their shares are aggregated for purposes of the 10% threshold.

According to the circuit court, the Executive Committee and the Board determined that the Hartman Group had triggered the Rights Plan because (1) they "had acquired additional shares" under the acting-in-concert provision, "as evidenced by the Schedule 13D and Schedule 13D/A"; and (2) the Acquiring Persons "had taken an action to change or influence control of the company" through "the filing of the Second Amended Complaint seeking liquidation."

In concluding that the Appellee Directors had acted in good faith in adopting the Rights Plan, the circuit court declared:

> [Hartman] has failed to rebut the presumption [under Md. Code, Corporations and Associations Article ("CA"), § 2-405.1(i)(2) that directors act in good faith]. Prior to the adoption of the Rights Plan, [Hartman] 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, [Hartman] 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, [Hartman] 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, [Hartman] 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 [Appellees] 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 [Hartman] 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 [Hartman] has failed to show [Appellees] acted in bad faith in enacting the Rights Plan.

In determining that the Board was justified in declaring a triggering event, the circuit court declared:

> [Hartman] 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. [Hartman] 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. [CA § 2-201(c).] Further, § 2-201(c) does not limit a board's discretion in regard to what can serve as a trigger. Accordingly, [Hartman] 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.
>
> * * *
>
> At trial, [Appellee] 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 [Hartman]. This testimony is corroborated by the fact that the Board refrained from declaring a trigger of the Rights Plan for months despite [Hartman's] hostile, concerted activities. On August 28, 2023, [Hartman], 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, [Hartman], 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, [Hartman] has failed to rebut the presumption that [Appellees] acted in good faith.
>
> At closing arguments, [Hartman] argued that a triggering event had to be a single event and could not be an accumulation of events. [Hartman]

> provided no Maryland law to support his proposition. However, even assuming that [Hartman] 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, [Hartman] 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.

(Footnote omitted.)

On appeal, Hartman challenges only the ruling on Count V, *i.e.*, the enforceability of the Rights Plan. The remaining rulings are not challenged.

DISCUSSION

Standard of Review

On appeal from a judgment entered after a bench trial, our review is governed by Maryland Rule 8-131(c), which provides:

> (c) **Action tried without a jury.** — When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

"'If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous.'" *MAS Assocs., LLC v. Korotki*, 465 Md. 457, 474 (2019) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). "The 'competent material evidence' standard has never required that the record lack even a modicum of evidence in support of the trial court's finding, as a literal reading of the words might suggest." *Id.* It is, nonetheless, "a highly deferential" standard of review. *Id.* In applying that standard, we "'must consider evidence produced at the trial in a light most favorable to the prevailing party[.]'" *Jackson v. 2109 Brandywine, LLC*, 180 Md. App. 535, 567 (2008) (cleaned up) (quoting *GMC v. Schmitz*, 362 Md. 229, 234 (2001)).

We afford no deference to a trial court's legal rulings or to its "legal conclusions based on its factual findings[.]" *MAS Assocs.*, 465 Md. at 475. "Where a case involves the application of Maryland statutory and case law," an appellate court "must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review." *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 338 (2017) (quotation marks and citations omitted).

Parties' Contentions

Hartman contends that a "stockholder lawsuit alleging that the corporation and/or its board has breached its charter and seeking to enforce that charter cannot give rise to a flip-in event[,]" which allows shareholders to purchase shares of the target company, "because such a suit does not seek to change or influence the control of the corporation." "Rather," he asserts, "such a lawsuit seeks to make the directors adhere to the requirements of the charter." Because a corporate charter is a contract between the corporation and its stockholders, "a stockholder has the right to bring suit against a corporation's board of directors for violations of contractual duties."

According to Hartman, "[t]he experts [who testified at trial] agreed that the filing of a stockholder suit to enforce the liquidation provision of a corporate charter cannot trigger a poison pill."[14] Were it otherwise, Hartman asserts, stockholders would be faced with "a

[14] Although correct, we note that at least one expert noted that the Appellee Directors believed Hartman's action was a subterfuge.

choice between enforcing their contract rights under the charter and losing close to half their ownership and voting interests[,]" thereby severely impairing their contractual rights.

Moreover, according to Hartman, "the claim here seeking an order that the Board commence liquidation pursuant to the Charter's mandatory liquidation provision is not a 'change in control' – it is an act that is expressly required by the Charter regardless of whether the Board approves of it." And if filing a lawsuit to enforce a corporate charter "cannot be the predicate for triggering the Poison Pill, disclosing the lawsuit also cannot do so." According to Hartman, filing the Schedule 13D/A "does not reflect that any member of the Hartman Group was engaged in an attempt to change control of Silver Star rather than permissibly use the court process [to] force the Appellee Directors to comply with its Charter[,]" and therefore, "the Hartman Group did not act in concert to change control of the Silver Star."

In the alternative, Hartman contends that the definition of "acting in concert" in the Rights Agreement is "impermissibly overbroad" and therefore unenforceable. Relying upon *Williams Cos. Stockholder Litigation*, No. 2020-0707-KSJM, 2021 WL 754593 (Del. Ch. 2021), which, he claims, "invalidated a Rights Agreement with a virtually identical definition of 'acting in concert' provision" as that at issue here, Hartman contends that the "acting in concert" provision "stifles normal stockholder communications."

Appellees counter that the Maryland codification of the business judgment rule[15] confers "broad discretion" on boards of directors and that, under that highly deferential standard, we should conclude that the Silver Star Board acted within its authority in adopting the Rights Plan. Appellees point out that Maryland has, by statute, rejected the heightened scrutiny standard that Delaware courts apply under *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985), to the adoption of rights plans by corporate boards.[16] According to Appellees, Hartman's reliance upon *Williams* is misplaced "for at least two reasons": first, *Williams* applied *Unocal* scrutiny to the board's actions, contrary to Maryland law; and second, Hartman misconstrues the holding in *Williams*, which, Appellees assert, was not that the rights plan at issue was overbroad but that the "Williams board did not face a substantial enough threat (or any threat at all) to justify adopting a stockholder rights plan with all of the terms when read together."

Moreover, Appellees point out that Maryland Code (1975, 2014 Repl. Vol.), Corporations and Association Article ("CA"), § 2-201(c) confers "sole discretion" on corporate boards to "[s]et the terms and conditions of rights, options, or warrants under a

[15] Maryland Code (1975, 2014 Repl. Vol., 2024 Supp.), Corporations and Association Article ("CA"), § 2-405.1. Appellees also interrelatedly invoke CA § 2-201(c), which expressly refers to the authority of a corporate board to adopt rights plans.

[16] Appellees quote *Shenker v. Laureate Education, Inc.*, 411 Md. 317, 349-50 (2009), where the Supreme Court of Maryland noted that the "entirety of the legislative history" of the 1999 amendments to the Maryland Corporations and Associations Article suggest an intent to reject the "heightened scrutiny" standard of *Unocal*. The Court further observed that this was "a relatively rare rejection in Maryland of Delaware's acknowledged leadership in developing a coherent body of corporate law to which we and many other states ordinarily look for guidance." *Id.* at 350.

stockholder rights plan" and to "[i]ssue rights, options, or warrants under a stockholder rights plan to designated persons or classes of persons." (Cleaned up.) Although the presumption that a board acts in good faith is rebuttable, Appellees further point out that the circuit court found that Hartman failed to rebut that presumption and that its findings are not clearly erroneous. Therefore, Appellees assert, "the Board's adoption of the Rights Plan, including the Acting-in-Concert provision, is accorded the presumption of correctness" and "should be upheld."

Finally, Appellees maintain that the "Hartman Group left no room for debate about whether they were acting in concert." According to Appellees, the Hartman Group was not merely "banding together," but they were "affirmatively work[ing] 'towards a common goal relating to changing or influencing control of Silver Star.'" That conclusion follows, according to Appellees, because the filing of the Schedule 13D/A was an announcement of "an effort to change control of the Board by liquidation through the amendment of the Circuit Court lawsuit[,]" which they sought to accomplish through "a collective act."

Appellees attempt to draw a distinction between filing the Second Amended Complaint, seeking to enforce the termination provision of the charter, and filing the Schedule 13D/A. Citing *Moran v. Household International, Inc.*, 500 A.2d 1346 (Del. 1985), Appellees maintain that "activities that are innocent in and of themselves, or even protected, can be triggering events under a stockholder rights plan when stockholders band together[,]" which was "exactly" the situation the Silver Star Board confronted in adopting the Rights Plan and declaring a triggering event. "Accordingly," according to Appellees, "the Circuit Court did not err when it determined that the Board was justified in determining that a triggering event had occurred when the Hartman Group filed the Schedule 13D/A."

"Poison Pills" Generally

The "poison pill" concept was developed in the 1980s as a device employed to ward off hostile corporate takeovers. A "poison pill," also known as a stockholder rights plan, is "a plan by which shareholders receive the right to be bought out by the corporation at a substantial premium on the occurrence of a stated triggering event." *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 180 (Del. 1986). Thus, a "company's board of directors adopts a 'Shareholder Rights Plan' pursuant to which a dividend of one 'Right' is declared on each share of common stock." Julian Velasco, *The Enduring Illegitimacy of the Poison Pill*, 27 J. Corp. L. 381, 382 (2002). "Each Right is attached to, and not tradable separately from, its corresponding share." *Id.* "Initially, the Rights are essentially meaningless." *Id.* "However, if certain specified events occur, such as the acquisition by a hostile bidder of more than a specified percentage of the company's shares, the poison pill is triggered." *Id.* "Once triggered, the Rights would detach from the shares and entitle all of the target company's shareholders, other than the hostile bidder, to acquire securities at a discount." *Id.* "'[F]lip-in' Rights," such as in this case, "allow the holders to purchase shares of the target company[.]" *Id.* "These discriminatory rights would severely dilute the hostile bidder's interest in the target company." *Id.* at 382-83. *See also* Note, *Protecting Shareholders Against Partial and Two-Tiered Takeovers: The Poison Pill Preferred*, 97 Harv. L. Rev. 1964, 1968 & n.25 (1984).

Generally, a poison pill, when triggered, results in a diluting event that can drastically reduce the value of a triggering stockholder's shares as well as a dilution of his or her voting rights. Usually, the mere threat of a poison pill is enough to ward off a hostile takeover attempt. According to the parties, there is only one known instance, prior to this case, where a poison pill actually was triggered.[17] *Versata Enters., Inc. v. Selectica, Inc.*, 5 A.3d 586 (Del. 2010).

The Poison Pill at Issue

Under the Rights Plan at issue in this case, there is a 10% Plan Limit. If a stockholder either acquires more than 10% of the outstanding shares, or pools his shares with those of other stockholders whose shares, in aggregate, comprise more than 10% of the outstanding shares, and then acts in concert with the others with the intent to "obtain[], chang[e] or influenc[e] control of the Company," then all those stockholders are deemed to be "Beneficial Owners" of each other's shares and are subject to the consequences of triggering of the Rights Plan.

Under the Rights Plan, a

> Person shall be deemed to be "Acting in Concert" with another Person if such Person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) at any time after the first public announcement of the adoption of this Agreement, in concert or in parallel with such other Person, or towards a common goal with such other Person, <u>relating to changing or influencing the control of the Company or in</u>

[17] Hartman's expert testified that the number of cases of which he was aware where a poison pill had been triggered could be counted on one hand. Appellees' expert concurred in that observation. *See also Moran v. Household Int'l, Inc.*, 500 A.2d 1346, 1352 (Del. 1985) (referring to a Wall Street Journal article dated July 26, 1985, discussing a dispute between Sir James Goldsmith and the board of Crown Zellerbach).

> connection with or as a participant in any transaction having that purpose or effect, where (i) each Person is conscious of the other Person's conduct and this awareness is an element in their respective decision-making processes and (ii) at least one additional factor supports a determination by the Board of Directors of the Company that such Persons intended to act in concert or in parallel[.]"

(Emphasis added.)

In this case, that "additional factor" was the filing of the Schedule 13D/A, announcing that the Second Amended Complaint had been filed, seeking to enforce the liquidation provision of the Silver Star corporate charter.

Maryland Poison Pill Statute

Section 2-201(c) of the Corporations and Association Article provides:

> (1) *Stockholder rights plan.* — The board of directors of a corporation may, in its sole discretion:
>
> (i) Set the terms and conditions of rights, options, or warrants under a stockholder rights plan; and
>
> (ii) Issue rights, options, or warrants under a stockholder rights plan to designated persons or classes of persons.
>
> (2) The rights, options, or warrants under paragraph (1) of this subsection may, in the sole discretion of the board of directors, include any limitation, restriction, or condition that:
>
> (i) 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; or
>
> (ii) Limits for a period not to exceed 180 days the power of a future director, as defined in the stockholder rights plan, to vote for the redemption, modification, or termination of the rights, options, or warrants.

Immunity of Corporate Directors

Section 2-405.1 of the Corporations and Association Article governs the standard of care for and immunity enjoyed by corporate directors and, since the 2016 amendment, 2016 Md. Laws, chs. 170-71, provides:

> (a) In this section, "act" includes, as the context requires:
>
> (1) An act, an omission, a failure to act, or a determination made not to act; or
>
> (2) To act, omit to act, fail to act, or make a determination not to act.
>
> (b) This section applies to acts of an individual who:
>
> (1) Is or was a director of a corporation; and
>
> (2) Is acting or was acting in the individual's official capacity as a director of a corporation.
>
> (c) A director of a corporation shall act:
>
> (1) In good faith;
>
> (2) In a manner the director reasonably believes to be in the best interests of the corporation; and
>
> (3) With the care that an ordinarily prudent person in a like position would use under similar circumstances.
>
> (d)(1) A director is entitled to rely on any information, opinion, report, or statement, including any financial statement or other financial data, prepared or presented by:
>
> (i) An officer or employee of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
>
> (ii) A lawyer, certified public accountant, or other person, as to a matter which the director reasonably believes to be within the person's professional or expert competence; or

(iii) A committee of the board on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

(2) A director is not acting in good faith if the director has any knowledge concerning the matter in question which would cause the reliance to be unwarranted.

(e) A director who acts in accordance with the standard of conduct provided in this section shall have the immunity from liability described under § 5-417 of the Courts Article.

(f) The standard of conduct provided in this section does not require a director of a corporation to:

(1) Act to accept, recommend, or respond on behalf of the corporation to a proposal by an acquiring person as defined in § 3-801 of this article;

(2) Act to authorize the corporation to redeem any rights under, modify, or render inapplicable, a stockholder rights plan;

(3) Act to elect on behalf of the corporation to be subject to or refrain from electing on behalf of the corporation to be subject to any or all of the provisions of Title 3, Subtitle 8 of this article;

(4) Act to make a determination under the provisions of Title 3, Subtitle 6 or Subtitle 7 of this article; or

(5) Act solely because of:

(i) The effect the act may have on an acquisition or potential acquisition of control of the corporation; or

(ii) The amount or type of consideration that may be offered or paid to stockholders of the corporation in an acquisition or a potential acquisition of control of the corporation.

(g) An act of a director of a corporation is presumed to be in accordance with subsection (c) of this section.

> (h) An act of a director of a corporation relating to or affecting an acquisition or a potential acquisition of control of the corporation or any other transaction or potential transaction involving the corporation may not be subject to a higher duty or greater scrutiny than is applied to any other act of a director.
>
> (i) This section:
>
> > (1) Is the sole source of duties of a director to the corporation or the stockholders of the corporation, whether or not a decision has been made to enter into an acquisition or a potential acquisition of control of the corporation or enter into any other transaction involving the corporation; and
> >
> > (2) Applies to any act of a director, including an act as a member of a committee of the board of directors.

CA § 2-405.1.

Analysis

"A corporate charter is considered to be a contract between the corporation and its shareholders." *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 504 (2021). "Thus, when interpreting a charter provision . . . , a court is essentially construing a provision of a contract between the corporation and the shareholders." *Id. See Tackney v. U.S. Naval Acad. Alumni Ass'n, Inc.*, 408 Md. 700, 716 (2009). For the same reason, the same principles of contract interpretation apply to the Rights Plan.

When interpreting a contract, we "give effect to the plain meaning of the contract, read objectively, regardless of the parties' subjective intent at the time of contract formation." *Impac*, 474 Md. at 507. We do not "construe particular language in isolation, but consider[] that language in relation to the entire contract." *Id.* We "construe the words consistent with their usual and ordinary meaning, unless it is apparent that the parties ascribed a special or technical meaning to the words." *Floyd v. Mayor & City Council of Balt.*, 179 Md. App. 394, 451 (2008) (cleaned up). If the terms at issue are unambiguous, ordinarily our analysis ends at that point, and we apply the unambiguous terms of the contract to the facts. *Impac*, 474 Md. at 507. Our review is de novo. *Floyd*, 179 Md. App. at 451.

We agree with Appellees that Maryland Corporation law (Sections 2-201(c) and 2-405.1) confers exceedingly broad powers on a corporate board in adopting and setting the terms of a stockholder rights plan. But the question at issue in this case is not whether the Silver Star Board could adopt the Rights Plan and set its terms. The question is whether, under the Rights Plan as adopted, the filing of the Schedule 13D/A publicly declaring that the Hartman Group was attempting to enforce Section 15.2 of the corporate charter, considered in context, was an act "relating to changing or influencing the control of the Company or in connection with or as a participant in any transaction having that purpose or effect[.]" We agree with Hartman that the filing of the Schedule 13D/A was not such an act.

To hold otherwise would mean that a board of directors could immunize itself from lawsuits enforcing the terms of a corporate charter (to which it otherwise is bound) through the threat of implementing a poison pill. But the termination provision in the charter unambiguously states that "the Company shall begin the process of liquidating [its] 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." Especially when the highly illiquid nature of the REIT is considered, we conclude a "reasonable person in the position of the parties would have meant at the time [the charter] was effectuated" that this term is enforceable by any stockholder. *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985).

The ultimate triggering event relied on by Appellees was the SEC filing disclosing the cause of action that had been filed seeking enforcement of the charter provision. As a shareholder, Hartman had the right to seek enforcement. The fact that Hartman is estopped on equitable principles from enforcing the liquidation provision does not change the result that the initiation of the suit did not trigger the Rights Plan. The charter had not been complied with despite the fact that the remedy for noncompliance, *i.e.*, immediate liquidation, was not available to Hartman for equitable reasons. The focus of the triggering event was Hartman's effort to force liquidation pursuant to the charter and Appellees' resistance to liquidation. The event did not include the acquisition of shares. Because we must interpret the Rights Plan "in relation to the entire contract[,]" *Impac*, 474 Md. at 507, including Section 15.2 of the charter, we conclude that the filing of the Schedule 13D/A, considered in the context of relevant circumstances, declaring the intent to enforce Section 15.2 of the charter, was not an act "relating to changing or influencing the control of the Company or in connection with or as a participant in any transaction having that purpose or effect[.]"

The circuit court held that Hartman was equitably estopped from enforcing the charter because of his conduct. His filing of admittedly meritless *lis pendens* during the Texas litigation, leading to a declaration of bankruptcy by a Silver Star subsidiary and incurrence of substantial expense to clear title to the affected properties, and his improper action in continuing to take distributions totaling more than $200,000 after the Silver Star Board had suspended all distributions, are the most prominent examples of his behavior. That did not invalidate the charter, however.

Assuming that the filing of the Schedule 13D/A comes within the language of the Rights Plan, Silver Star cannot enforce a provision that is inconsistent with its charter. We recognize that Maryland law, specifically CA § 2-201(c), confers exceptionally broad discretion on boards of directors in setting the terms and conditions of rights under a poison pill and in implementing them. That discretion, nonetheless, is not limitless. Although a board of directors may, in its "sole discretion," impose "any limitation, restriction, or condition that . . . [p]recludes, limits, invalidates, or voids the exercise, transfer, or receipt of the rights, options, or warrants [in a rights agreement] by designated persons or classes of persons in specified circumstances[,]" CA § 2-201(c)(2), that discretion does not extend, as claimed here, to the effective denial of the right of any stockholder to seek to enforce a provision in a corporate charter. The validity and enforceability of the charter is not questioned by any party.

We hold that the filing of a civil action by a stockholder to enforce the terms of a corporation's charter and the reporting of that lawsuit in a Schedule 13D/A filed with the SEC did not trigger a poison pill, and therefore, we shall reverse and remand. On remand, the circuit court shall take appropriate action to undo the implementation of the Rights Plan.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.

APPENDIX A

The following are pertinent provisions from the Silver Star Rights Agreement. The Rights Agreement defines "Acquiring Person" as follows:

> (a) "Acquiring Person" shall mean any Person (as such term is hereinafter defined) who or which, together with all Affiliates and Associates of such Person, shall be the Beneficial Owner (as such term is hereinafter defined) of 10% or more of the shares of Common Stock then outstanding, but shall not include an Exempt Person (as such term is hereinafter defined); provided, however, that
>
> (i) if the Board of Directors of the Company determines that a Person who would otherwise be an "Acquiring Person" became the Beneficial Owner of a number of shares of Common Stock such that the Person would otherwise qualify as an "Acquiring Person" inadvertently (including, without limitation, because (A) such Person was unaware that it beneficially owned that number of shares of Common Stock that would otherwise cause such Person to be an "Acquiring Person" or (B) such Person was aware of the extent of its Beneficial Ownership of Common Stock but had no actual knowledge of the consequences of such Beneficial Ownership under this Agreement) and without any intention of obtaining, changing or influencing control of the Company, then such Person shall not be deemed to be or to have become an "Acquiring Person" for any purposes of this Agreement unless and until such Person shall have failed to divest itself, as soon as practicable (as determined by the Board of Directors of the Company), of Beneficial Ownership of a sufficient number of shares of Common Stock so that such Person would no longer otherwise qualify as an "Acquiring Person";
>
> (ii) if, as of the date hereof or prior to the first public announcement of the adoption of this Agreement, any Person (together with its Affiliates and Associates) is or becomes the Beneficial Owner of 10% or more of the shares of Common Stock outstanding, such Person shall not be deemed to be or to become an "Acquiring Person" unless and until such time as such Person shall, after the first public announcement of the adoption of this Agreement, become the Beneficial Owner of any additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock or pursuant to a split or subdivision of the outstanding Common Stock) that would cause such Person's Beneficial Ownership of the Common Stock outstanding to exceed

by any amount such Person's Beneficial Ownership as of the date of this Agreement, in which case such Person will become an Acquiring Person;

(iii) no Person shall become an "Acquiring Person" solely as a result of any unilateral grant of any security by the Company or through the exercise of any options, warrants, rights or similar interests (including restricted stock) granted by the Company to its directors, officers and employees;

(iv) no Person shall become an "Acquiring Person" solely as the result of an acquisition of shares of Common Stock by the Company which, by reducing the number of shares of Common Stock outstanding, increases the proportion of the shares of Common Stock beneficially owned by such Person to 10% or more of the Common Stock then outstanding; provided, however, that if a Person shall become the Beneficial Owner of 10% or more of the shares of Common Stock then outstanding by reason of such share acquisitions by the Company and shall thereafter become the Beneficial Owner of any additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock or pursuant to a split or subdivision of the outstanding Common Stock), then such Person shall be deemed to be an "Acquiring Person" unless, upon becoming the Beneficial Owner of such additional shares of Common Stock, such Person does not beneficially own 10% or more of the shares of Common Stock then outstanding;

(v) no Person shall become an "Acquiring Person" solely as the result of the acquisition by such Person of Beneficial Ownership of shares of Common Stock from an individual who, on the later of the date hereof and the first public announcement of this Agreement, is the Beneficial Owner of 10% or more of the Common Stock then outstanding if such shares of Common Stock are received by such Person upon such individual's death pursuant to such individual's will or pursuant to a charitable trust created by such individual for estate planning purposes unless and until such time as such Person shall become the Beneficial Owner of any additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Stock or pursuant to a split or subdivision of the outstanding Common Stock), unless, upon becoming the Beneficial Owner of such additional shares of Common Stock, such Person is not then the Beneficial Owner of 10% or more of the shares of Common Stock then outstanding if such shares of Common Stock are received by such Person upon such individual's death pursuant to such individual's will or pursuant to a charitable trust created by such individual for estate planning purposes.

With respect to any Person, for all purposes of this Agreement, any calculation of the number of shares of Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of the outstanding shares of Common Stock of which any such Person is the Beneficial Owner, shall include the number of shares of Common Stock not outstanding at the time of such calculation that such Person is otherwise deemed to beneficially own for purposes of this Agreement, but the number of shares of Common Stock not outstanding that such Person is otherwise deemed to beneficially own for purposes of this Agreement shall not be included for the purpose of computing the percentage of the outstanding shares of Common Stock beneficially owned by any other Person (unless such other Person is also deemed to beneficially own for purposes of this Agreement such shares of Common Stock not outstanding).

The Rights Agreement includes an acting-in-concert provision:

(b) A Person shall be deemed to be "Acting in Concert" with another Person if such Person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) at any time after the first public announcement of the adoption of this Agreement, in concert or in parallel with such other Person, or towards a common goal with such other Person, relating to changing or influencing the control of the Company or in connection with or as a participant in any transaction having that purpose or effect, where (i) each Person is conscious of the other Person's conduct and this awareness is an element in their respective decision-making processes and (ii) at least one additional factor supports a determination by the Board of Directors of the Company that such Persons intended to act in concert or in parallel, which additional factors may include, without limitation, exchanging information, attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided that, the additional factor required shall not include actions by an officer or director of the Company acting in such capacities. A Person who is Acting in Concert with another Person shall also be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other Person. No Person shall be deemed to be Acting in Concert with another Person solely as a result of (i) making or receiving a solicitation of, or granting or receiving, revocable proxies or consents given in response to a public proxy or consent solicitation made to more than 10 holders of shares of a class of stock of the Company registered under Section 12 of the Exchange Act, or (ii) soliciting or being solicited for tenders of, or tendering or receiving tenders of, securities in a public tender or exchange offer made pursuant to, and in accordance with, Section 14(d) of the Exchange Act by means of a tender offer statement filed on Schedule TO.

The Rights Agreement defines "Beneficial Ownership" broadly:

> (d) A Person shall be deemed the "Beneficial Owner" of, shall be deemed to have "Beneficial Ownership" of and shall be deemed to "beneficially own" any securities:
>
> (i) which such Person or any of such Person's Affiliates or Associates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 of the General Rules and Regulations under the Exchange Act;
>
> (ii) which such Person or any of such Person's Affiliates or Associates has, directly or indirectly: (A) the right or obligation to acquire (whether such right is exercisable, or such obligation is required to be performed, immediately or only after the passage of time, upon compliance with regulatory requirements, upon the satisfaction of conditions (whether or not within the control of such Person) or otherwise) pursuant to any agreement, arrangement or understanding (whether or not in writing) (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights (other than the Rights), warrants or options, or otherwise; <u>provided</u>, <u>however</u>, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, (w) securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange, (x) securities which such Person has a right to acquire upon the exercise of Rights at any time prior to the time that any Person becomes an Acquiring Person, (y) securities issuable upon the exercise of Rights from and after the time that any Person becomes an Acquiring Person if such Rights were acquired by such first Person or any of such first Person's Affiliates or Associates prior to the Distribution Date or pursuant to Section 3(a) or Section 22 hereof ("Original Rights") or pursuant to Section 11(i) or Section 11(n) with respect to an adjustment to Original Rights, or (z) securities which such Person or any of such Person's Affiliates or Associates may acquire, does or do acquire or may be deemed to have the right to acquire, pursuant to any merger or other acquisition agreement between the Company and such Person (or one or more of such Person's Affiliates or Associates) if such agreement has been approved by the Board of Directors of the Company prior to such Person's

becoming an Acquiring Person; or (B) the right to vote pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly, by any other Person (or any Affiliate or Associate of such other Person) and with respect to which such first Person or any of such first Person's Affiliates or Associates (A) is Acting in Concert or (B) has (x) any agreement, arrangement or understanding (whether or not in writing) (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to Section 1(d)(ii)(B)) or disposing of such securities or (y) any agreement, arrangement or understanding (whether or not in writing) to cooperate in obtaining, changing or influencing control of the issuer of such securities; or

(iv) which are beneficially owned, directly or indirectly, by a Counterparty (or any of such Counterparty's Affiliates or Associates) under any Derivatives Contract (without regard to any short or similar position under the same or any other Derivatives Contract) to which such Person or any of such Person's Affiliates or Associates is a Receiving Party (as such terms are hereinafter defined); provided, however, that the number of shares of Common Stock that a Person is deemed to beneficially own pursuant to this clause (iv) in connection with a particular Derivatives Contract shall not exceed the number of Notional Common Shares (as such term is hereinafter defined) with respect to such Derivatives Contract; provided further that the number of securities beneficially owned by each Counterparty (including its Affiliates and Associates) under a Derivatives Contract shall for purposes of this clause (iv) be deemed to include all securities that are beneficially owned, directly or indirectly, by any other Counterparty (or any of such other Counterparty's Affiliates or Associates) under any Derivatives Contract to which such first Counterparty (or any of such first Counterparty's Affiliates or Associates) is a Receiving Party, with this proviso being applied to successive Counterparties as appropriate;

provided, however, that no Person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such Person's status or authority as such, to be the "Beneficial Owner" of, to have "Beneficial Ownership" of or to "beneficially own" any securities that are "beneficially owned" (as defined in this Section l(c)), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person.

"Exempt Person" is defined:

(q) "Exempt Person" shall mean the Company or any Subsidiary of the Company, in each case including, without limitation, in its fiduciary capacity, or any employee benefit plan of the Company or of any Subsidiary of the Company, or any entity or trustee holding (or acting in a fiduciary capacity in respect of) Common Stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or of any Subsidiary of the Company.

"Flip-In Event" is defined in Section 11(a)(ii):

(i[i]) Subject to Section 24 of this Agreement, in the event any Person becomes an Acquiring Person (the first occurrence of such event being referred to hereinafter as the "Flip-In Event"), then (A) the Purchase Price shall be adjusted to be the Purchase Price in effect immediately prior to the Flip-In Event multiplied by the number of one one-fifths of a share of Preferred Stock for which a Right was exercisable immediately prior to such Flip-In Event, whether or not such Right was then exercisable, and (B) each holder of a Right, except as otherwise provided in this Section 11(a)(ii) and Section 11(a)(iii) hereof, shall thereafter have the right to receive, upon exercise thereof at a price equal to the Purchase Price (as so adjusted), in accordance with the terms of this Agreement and in lieu of shares of Preferred Stock, such number of shares of Common Stock as shall equal the result obtained by dividing the Purchase Price (as so adjusted) by 50% of the current per share market price of the Common Stock (determined pursuant to Section 11(d) hereof) on the date of such Flip-In Event; provided, however, that the Purchase Price (as so adjusted) and the number of shares of Common Stock so receivable upon exercise of a Right shall, following the Flip-In Event, be subject to further adjustment as appropriate in accordance with Section 11(f) hereof. Notwithstanding anything in this Agreement to the contrary, however, from and after the Flip-In Event, any Rights that are beneficially owned by (x) any Acquiring

> Person (or any Affiliate or Associate of any Acquiring Person), (y) a transferee of any Acquiring Person (or of any such Affiliate or Associate) who becomes a transferee after the Flip-In Event or (z) a transferee of any Acquiring Person (or of any such Affiliate or Associate) who became a transferee prior to or concurrently with the Flip-In Event pursuant to either (I) a transfer (whether or not for consideration) from the Acquiring Person to holders of its equity securities or to any Person with whom it has any continuing agreement, arrangement or understanding (whether or not in writing) regarding the transferred Rights or (II) a transfer which the Board of Directors of the Company has determined is part of a plan, arrangement or understanding which has the purpose or effect of avoiding the provisions of this paragraph, and subsequent transferees, either direct transferees or transferees through one or more intermediate transferees, of such Persons, shall be void without any further action and any holder of such Rights shall thereafter have no rights whatsoever with respect to such Rights under any provision of this Agreement. The Company shall use all reasonable efforts to ensure that the provisions of this Section 11(a)(ii) are complied with, but shall have no liability to any holder of Right Certificates or other Person as a result of its failure to make any determinations with respect to an Acquiring Person, its Affiliates or Associates or its or their transferees hereunder. From and after the Flip-In Event, no Right Certificate shall be issued pursuant to Section 3 or Section 6 hereof that represents Rights that are or have become void pursuant to the provisions of this paragraph, and any Right Certificate delivered to the Rights Agent that represents Rights that are or have become void pursuant to the provisions of this paragraph shall be canceled. From and after the occurrence of an event specified in Section 13(a) hereof, any Rights that theretofore have not been exercised pursuant to this Section 11(a)(ii) shall thereafter be exercisable only in accordance with Section 13 and not pursuant to this Section 11(a)(ii).

Section 24 of the Rights Agreement sets forth the mechanism for exchange of Rights Certificates for Common Shares and provides:

> (a) The Board of Directors of the Company may, at its option, at any time after the Flip-In Event, exchange all or part of the then outstanding Rights (which shall not include Rights that have become void pursuant to the provisions of Section 11(a)(ii) hereof) for shares of Common Stock at an exchange ratio of one share of Common Stock per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring in respect of the Common Stock, after the date hereof (such amount per Right being hereinafter referred to as the "Exchange Ratio"). Notwithstanding the foregoing, the Board of Directors of the

Company shall not be empowered to effect such exchange at any time after an Acquiring Person shall have become the Beneficial Owner of 50% or more of the shares of the Common Stock then outstanding. From and after the occurrence of an event specified in Section 13(a) hereof, any Rights that theretofore have not been exchanged pursuant to this Section 24(a) shall thereafter be exercisable only in accordance with Section 13 and may not be exchanged pursuant to this Section 24(a). The exchange of the Rights by the Board of Directors of the Company may be made effective at such time, on such basis and with such conditions as the Board of Directors of the Company in its sole discretion may establish. Prior to effecting an exchange pursuant to this Section 24, the Board of Directors of the Company shall provide prompt written notice to the Rights Agent and the Board of Directors of the Company may direct the Company to enter into a Trust Agreement in such form and with such terms as the Board of Directors of the Company shall then approve (the "Trust Agreement"). If the Board of Directors of the Company so directs, the Company shall enter into the Trust Agreement and shall issue to the trust created by such agreement (the "Trust") all of the shares of Common Stock issuable pursuant to the exchange, and all Persons entitled to receive shares pursuant to the exchange shall be entitled to receive such shares (and any dividends or distributions made thereon after the date on which such shares are deposited in the Trust) only from the Trust and solely upon compliance with the relevant terms and provisions of the Trust Agreement.

(b) Immediately upon the effectiveness of the action of the Board of Directors of the Company ordering the exchange of any Rights pursuant to paragraph (a) of this Section 24 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of shares of Common Stock equal to the number of such Rights held by such holder multiplied by the Exchange Ratio. The Company shall promptly give public notice (and provide prompt written notice to the Rights Agent) of any such exchange; provided, however, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company shall promptly mail a notice of any such exchange to all of the holders of the Rights so exchanged at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the shares of Common Stock for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than Rights which have become void

> pursuant to the provisions of Section 11(a)(ii) hereof) held by each holder of Rights.
>
> (c) The Company may at its option substitute, and, in the event that there shall not be sufficient shares of Common Stock issued but not outstanding or authorized but unissued to permit an exchange of Rights for Common Stock as contemplated in accordance with this Section 24, the Company shall substitute to the extent of such insufficiency, for each share of Common Stock that would otherwise be issuable upon exchange of a Right, a number of shares of Preferred Stock or fraction thereof (or Equivalent Preferred Shares, as such term is defined in Section 11(b)) such that the current per share market price (determined pursuant to Section 11(d) hereof) of one share of Preferred Stock (or Equivalent Preferred Share) multiplied by such number or fraction is equal to the current per share market price of one share of Common Stock (determined pursuant to Section 11(d) hereof) as of the date of such exchange.

Rights Agreement dated August 18, 2023.

APPENDIX B

The original Schedule 13D, filed October 4, 2023, contained the following "**Item 4. Purpose of Transaction.**"

> The Reporting Persons own, in the aggregate, 5,241,860 shares of Silver Star common stock, or approximately 15.0% of the issued and outstanding shares of Silver Star common stock, which collectively makes them the largest stockholders of Silver Star.
>
> The Reporting Persons believe that Silver Star should pursue a liquidation strategy and return capital to investors. Mr. Hartman believes that Silver Star has been, and is being, mismanaged and that the majority of Silver Star's stockholders would prefer a return of their invested capital in a Texas commercial property REIT rather than allowing their investments to be gambled in a national self-storage strategy.
>
> Mr. Hartman believes that the value of Silver Star is declining due to mismanagement by the Executive Committee (the "Committee") of its board of directors (the "Board"), led by Gerald Haddock. Mr. Hartman believes that Silver Star has pursued a near-term liquidation strategy to sell assets at fire sale prices and has invested primary in market self-storage investments at a premium cost to the investors.
>
> Silver Star has not held an annual meeting of stockholders since October 2013. On August 25, 2023, after Silver Star refused to confirm that it would hold an annual meeting of stockholders in 2023 for the purpose of electing directors for the ensuing year, Mr. Hartman filed a complaint in the Circuit Court for Baltimore City, Maryland (Case No. 24C23003722) pursuant to which he is asking the court to require Silver Star to hold a 2023 annual meeting. A copy of the complaint was provided to Silver Star's general counsel on August 25, 2023. Just five days later, on August 30, 2023, Silver Star filed a Current Report on Form 8-K to announce that the Executive Committee of Silver Star's Board of Directors had amended Silver Star's Bylaws, effective August 28, 2023, "to allow the stockholders to elect directors and transact any business within the powers of the Company without a meeting, by a consent in writing or by electronic transmission to such action by a quorum of the stockholders, at the discretion of the Board of Directors, and to deliver notice of shareholder meetings to a stockholder's email address of record." Mr. Hartman believes that the Bylaw amendment was adopted in response to his lawsuit and for a purpose of disenfranchising stockholders of their right to annually elect directors at a duly called and

convened annual meeting. Mr. Hartman further believes that the Bylaw amendment violates Maryland law and cannot be enforced. First, Section 2-411(a)(2)(iii) of the Maryland General Corporation Law (the "MGCL") prohibits the Board from delegating to a committee, including the Committee, the power to amend the Bylaws. Second, Section 2-505(b)(2) of the MGCL prohibits the holders of Silver Star's common stock from taking action without a meeting except by unanimous written consent unless the power to do so is expressly authorized by Silver Star's charter. Silver Star's charter does not authorize the holders of Silver Star's common stock to take action without a meeting.

Also on August 25, 2023, Mr. Hartman and vREIT, through counsel, made a demand on Silver Star to inspect and copy Silver Star's stock ledger pursuant to Section 2-513 of the MGCL and Section 8.8 of Silver Star's charter. Silver Star was required to make the stock ledger available no later than September 14, 2023. On September 24, 2023, Silver Star's general counsel responded to the demand by citing to case law from a jurisdiction other than Maryland that addressed the corporation law of such other jurisdiction and stating that Silver Star would not make the stock ledger available because Mr. Hartman and vREIT did not articulate "a legitimate purpose" for requesting the stock ledger. Neither Maryland law (statutory or case law) nor Silver Star's charter requires a requesting stockholder to articulate a "legitimate purpose" when seeking to inspect and copy the stock ledger. Indeed, Section 8.2 of Silver Star's charter guarantees to "any Stockholder" the right to inspect and copy Silver Star's stockholder list "in connection with matters relating to Stockholder's voting rights, and the exercise of Stockholder rights under federal proxy laws." In any event, Mr. Hartman and vREIT made such demand because they desire to communicate with Silver Star's common stockholders regarding their investments, Silver Star's business and compensation strategies, and, in some cases, the possibility of serving on the Board.

Other than engaging in such communications, the Reporting Persons presently have no specific plans or proposals that would relate to or would result in any of the actions specified in subparagraphs (a) through (j) of Item 4 of Schedule 13D; however, they may, in the future, take such actions with respect to their investments in Silver Star, alone, as a group, or with others, that might involve one or more of the events described in the aforementioned subparagraphs, including communications with Silver Star's board of directors and stockholders respecting strategies to enhance stockholder value by, among other initiatives, pursuing changes in the composition of the Board of Directors.