

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE AMC ENTERTAINMENT)
HOLDINGS, INC. STOCKHOLDER) Consol. C.A. No. 2023-0215-MTZ
LITIGATION)

**REPORT AND RECOMMENDATION OF
SPECIAL MASTER REGARDING JORDAN AFFHOLTER'S
MOTION FOR SANCTIONS AND NOTICE CORRESPONDENCE**

PRICKETT, JONES & ELLIOTT, P.A.
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Special Master

Dated: May 23, 2023

PRELIMINARY STATEMENT

The Court has issued two opinions in this matter, and I have issued various reports and recommendations, one of which included a brief factual recitation.¹ I incorporate the factual recitation from my prior report herein and presume familiarity with the general nature of this dispute. On May 17, 2023, I recommended that the Court deny Jordan Affholter’s (“Affholter”) motion to intervene.² I incorporate those recommendations in this report and recommendation.

On May 2, 2023, Affholter asked the Court to “conduct a misrepresentation hearing” and impose sanctions against the defendants and their counsel.³ On May 4, 2023, Affholter filed correspondence regarding the process by which AMC Entertainment Holdings, Inc. (“AMC”) stockholders will receive notice of the proposed settlement (“Notice”) and the documentation required by an objector to the settlement to establish the objector is a member of the settlement class.⁴

The Court appointed me as a Special Master in this action to make recommendations as to certain motions,⁵ including “other submissions from

¹ Trans. ID 69924744.

² Trans. ID 70033944.

³ Trans. ID 69941676. While not styled as a formal motion, I will refer to this correspondence as the “Sanctions Motion.”

⁴ Trans. ID 69958472 (the “Notice Correspondence”). This was not filed as a formal motion and Affholter did not file a proposed order.

⁵ See Order Appointing Special Master ¶ 1 (Trans. ID 69885808).

interested parties styled as motions.”⁶ Recommendations regarding the Sanctions Motion and the Notice Correspondence fall within the scope of my authority.

I recommend that the Court deny the Sanctions Motion. As to the Notice Correspondence, Affholter does not seek any relief that could be granted by the Court. To the extent a recommendation is necessary on the Notice Correspondence, I recommend that the Court deny it.

ANALYSIS AND RECOMMENDATION

A. The Sanctions Motion

In the Sanctions Motion, Affholter seeks a hearing pursuant to Court of Chancery Rule 11(b)⁷ based on the following paraphrasing of statements by defendants’ counsel at a hearing on April 25, 2023:⁸

- It remains important for the company AMC to be in a position to raise cash and to do it as soon as possible;⁹

⁶ Trans. ID 69935078.

⁷ Affholter is not a party to this action and did not serve the Sanctions Motion in compliance with Rule 11(c)(1)(A). These likely are bases to deny the Sanctions Motion but I do not need to address them because there are other grounds to deny the Sanctions Motion. *See Baird v. Owczarek*, 2013 WL 4721375, at *6 (Del. Super. Ct. Aug. 29, 2013), *rev’d on other grounds*, 93 A.3d 1222 (Del. 2014).

⁸ *See* Sanctions Motion at 1.

⁹ *See In re AMC Entm’t Holdings, Inc. S’holder Litig.*, C.A. No. 2023-0215-MTZ, at 12 (Del. Ch. Apr. 25, 2023) (TRANSCRIPT) (“April 25 Tr.”) (“It remains important, as it has been throughout the pandemic and its aftermath, for the company to be in a position to raise cash and to do it as soon as possible.”).

- AMC’s desire to continue to bolster cash reserves;¹⁰
- Because of the desire to raise cash whether fast schedule could be truncated a bit – notice to the class going out at least 45 days before the hearing date instead of 60 days;¹¹
- Notice be accomplished by electronic means (such as 8K and AMC’s website) and not by mailing;¹²
- There are an “estimated” 3.8 million AMC shareholders.¹³

Affholter then cites a May 1, 2023 tweet by AMC’s Chief Executive Officer, Adam Aron (“Aron”), in which Aron supposedly stated that AMC had a “sizeable cash position.”¹⁴ Affholter contends that Aron’s tweet contradicts the above representations by defendants’ counsel and requests a hearing pursuant to Rule 11(b).

I treat the Sanctions Motion as one pursuant to Rule 11(b)(3), which provides:

(b) *Representations to Court.* By presenting to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying

¹⁰ *Id.* at 13 (“The question that we have, given our desire to continue to bolster cash reserves, is whether that schedule could be truncated a bit.”).

¹¹ *See id.*

¹² *See id.*

¹³ *Id.* at 32.

¹⁴ Sanctions Motion at 1-2.

that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . .

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

Even if I could find that Affholter has standing to assert the Sanctions Motion, despite my prior denial of Affholter's request to intervene, I would recommend the Court deny it. Rule 11 sanctions "should be reserved for those instances where the Court is reasonably confident that an attorney does not have an objective good faith belief in the legitimacy" of a presented issue.¹⁵ Here, I have no basis to infer that any statement by defendants' counsel on April 25 was incorrect, much less that counsel lacked an objective, good faith belief about the veracity of the statements.

Affholter contends that defendants' counsel's statements regarding AMC's cash position conflict with Aaron's representations in a tweet six days later. I disagree. Companies can have cash and, at the same time, desire to preserve and quickly raise more cash. Beyond citing Aron's tweet, Affholter does not explain or provide any evidence suggesting that what defendants' counsel said was untrue. Furthermore, Affholter fails to provide any reason to believe that defendants'

¹⁵ *Xen Investors, LLC v. Xentex Techs., Inc.*, 2003 WL 25575770, at *3 (Del. Ch. Dec. 8, 2003).

counsel's statements were not made "to the best of the person's knowledge, information, and belief."¹⁶

Affholter also cites defendants' counsel's estimate that 3.8 million AMC shareholders exist but does not contend that this statement was inaccurate. Rather, Affholter seeks clarification and production of a "raw data file."¹⁷ As Affholter has offered no basis to infer defendants' counsel made a misrepresentation, there is no basis under Rule 11 to recommend any relief.

For these reasons, I recommend that the Court deny the Sanctions Motion.

B. The Notice Correspondence

In the Notice Correspondence, Affholter seeks answers to questions about the Notice process and raises issues with the documentation required by an objector to the settlement to establish the objector is a member of the settlement class.¹⁸ The Court, however, cannot provide parties or class members with legal advice or issue advisory opinions, and questions about the settlement should be directed elsewhere.¹⁹ Affholter did not seek any specific relief or submit a proposed order

¹⁶ Ct. Ch. R. 11(b).

¹⁷ Sanctions Motion at 2.

¹⁸ Notice Correspondence at 1-2.

¹⁹ See *BuzzFeed, Inc. v. Anderson*, 2022 WL 15627216, at *19 (Del. Ch. Oct. 28, 2022) (holding Delaware courts do not issue advisory or hypothetical opinions). I note that certain of these questions are better directed to plaintiffs' counsel. See Notice ¶ 73 ("If you have questions regarding the proposed Settlement, you may contact Lead Counsel at AMCSettlementObjections@blbglaw.com.").

from which I could ascertain the relief Affholter might be seeking. As a result, even if I were to treat the Notice Correspondence as a motion, I would recommend that the Court deny it.

CONCLUSION

For the reasons set forth herein, I recommend that the Court DENY the Sanctions Motion. To the extent a recommendation is necessary as to the Notice Correspondence, I recommend that the Court DENY it.

Dated: May 23, 2023

PRICKETT, JONES & ELLIOTT, P.A.

/s/ Corinne Elise Amato

Corinne Elise Amato (Bar No. 4982)

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Special Master

CERTIFICATE OF SERVICE

I, Corinne Elise Amato, certify on this 23rd day of May, 2023, that I caused a copy of the foregoing *Report and Recommendation of Special Master Regarding Jordan Affholter's Motion for Sanctions and Notice Correspondence* to be served via File & ServeXpress on the following counsel of record:

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I further certify that, on May 23, 2023, I caused a true and correct copy of the *Report and Recommendation of Special Master Regarding Jordan Affholter's Motion for Sanctions and Notice Correspondence* to be served via email upon the following Pro Se party:

Via Email by File and ServeExpress:
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/s/ Corinne Elise Amato
Corinne Elise Amato (#4982)