

**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 FRANK IACONO'S SECOND MOTION TO INTERVENE**

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*Special Master*

Dated: June 23, 2023

## REPORT AND RECOMMENDATION

This report and recommendation addresses Frank Iacono’s Second Motion to Intervene (the “Second Motion to Intervene” or the “Motion”).<sup>1</sup> For the reasons that follow, I recommend that the Court deny the Motion.<sup>2</sup>

### A. Background

On March 1, 2023, Frank Iacono (“Iacono”) filed an Emergency Motion to Intervene (the “First Motion to Intervene”),<sup>3</sup> claiming that the parties’ stipulation and this Court’s order delaying the conversion of AMC Preferred Equity Units (“APEs”) into shares of AMC Entertainment Holdings, Inc. (“AMC”) common stock would nullify the effect of his put options that would soon expire.<sup>4</sup> On March 15, 2023, the Court held that Iacono’s interest was “not in the claims themselves, but in the parties’ procedural response to them” and his “collateral and indirect economic interest” in protecting his investment strategy was not a sufficient basis to intervene.<sup>5</sup> As a result, the Court denied Iacono’s First Motion to Intervene.

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<sup>1</sup> Trans. ID 70097286.

<sup>2</sup> The Court appointed me as a Special Master in this action. *See* Order Appointing Special Master ¶ 1 (Trans. ID 69885808) (“Special Master Appointment Order”). A recommendation concerning the Motion falls within the scope of my authority. I presume familiarity with the general nature of this dispute.

<sup>3</sup> Trans. ID 69251688.

<sup>4</sup> First Motion to Intervene at 2-3.

<sup>5</sup> *In re AMC Entm’t Holdings, Inc. Stockholder Litig.*, 2023 WL 2518479, at \*4 (Del. Ch. Mar. 15, 2023) (citations omitted).

On March 21, 2023, Iacono asked the Court to “reconsider its decision.”<sup>6</sup> I was appointed as Special Master and tasked with, among other things, making a recommendation on Iacono’s request for reconsideration.<sup>7</sup> I recommended that the Court deny that request<sup>8</sup> and Iacono did not take exception to that report and recommendation.<sup>9</sup>

On May 26, 2023, Iacono filed the Second Motion to Intervene and an Intervenor’s Verified Complaint in Intervention (the “Complaint in Intervention”).<sup>10</sup> Iacono again seeks to intervene, as of right and permissively, this time, to protect his “economic and legal interests” as an APE unitholder.<sup>11</sup> Iacono asserts that he purchased APE units “reasonably relying on the Company’s promises” of a one-for-one conversion, and that the proposed settlement will dilute his APE units and “deprive [him] of the benefit of his bargain.”<sup>12</sup> If permitted to intervene, Iacono intends to challenge the proposed settlement and seek to dismiss plaintiffs’ claims

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<sup>6</sup> Trans. ID 69600905.

<sup>7</sup> Special Master Appointment Order ¶ 1.

<sup>8</sup> Trans. ID 69924744.

<sup>9</sup> *See* Ct. Ch. R. 144(c)

<sup>10</sup> Trans. ID 70097286.

<sup>11</sup> Second Motion to Intervene at 1.

<sup>12</sup> *Id.* at 3.

by pursuing his own breach of fiduciary duty, breach of contract, wrongful interference and declaratory judgment claims.<sup>13</sup>

On June 9, the parties opposed the Motion,<sup>14</sup> and on June 13, Iacono filed a reply in further support of the Motion.<sup>15</sup>

### **B. Intervention as a Matter of Right**

Intervention as of right is permitted where the applicant “claims an interest relating to the property or transaction” that is the subject of the action and the proposed intervenor is “so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”<sup>16</sup> When presented with the request, the Court must first determine if the applicant has an interest at risk in the action.<sup>17</sup> If such an interest exists, the Court will evaluate

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<sup>13</sup> Complaint in Intervention at 15-16.

<sup>14</sup> Plaintiffs’ Opposition to Frank Iacono’s Second Motion to Intervene (Trans. ID 70171478) (“Plaintiffs’ Opposition”); Defendants’ Opposition to Frank Iacono’s Second Motion to Intervene (Trans. ID 70172778).

<sup>15</sup> Reply in Further Support of Second Motion to Intervene (Trans. ID 70191643) (“Iacono’s Reply”).

<sup>16</sup> Ct. Ch. R. 24(a). Although the Court may grant intervention, as of right or permissively, where a statute confers such a right, Iacono has not identified any applicable statute. Ct. Ch. R. 24(a), (b).

<sup>17</sup> *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 398 (Del. Ch. 2008), *judgment entered*, 2008 WL 5352169 (Del. Ch. Dec. 19, 2008), *and aff’d sub nom. Whitson v. Marie Raymond Revocable Tr.*, 976 A.2d 172 (Del. 2009).

whether the interest is (i) direct rather than remote or contingent and (ii) in the claims rather than the effects the action might have on that interest.<sup>18</sup>

Iacono does not have an interest at risk in the action because he is not a member of the class and “is free to pursue [his] claims ... elsewhere.”<sup>19</sup> Although I believe that conclusion is sufficient to deny Iacono’s request to intervene as a matter of right, I note that Iacono is seeking to avoid a collateral and indirect economic impact on his APE units (dilution) caused by the proposed settlement.<sup>20</sup> Thus, even if he did have an interest at risk in the action, that interest is based on a collateral, indirect impact of the action rather than the claims asserted in the action. I do not view that as a sufficient basis to permit Iacono to intervene as of right.<sup>21</sup>

### **C. Permissive Intervention**

The Court may grant permissive intervention “when an applicant’s claim or defense and the main action have a question of law or fact in common.”<sup>22</sup> The Court

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<sup>18</sup> *AMC*, 2023 WL 2518479, at \*2.

<sup>19</sup> *MAT Five LLC*, 980 A.2d at 398.

<sup>20</sup> Motion at 2-3. Iacono claims that the proposed settlement will change the conversion rate from a one-for-one conversion to a rate of 0.88 AMC shares per APE unit. Motion at 2; Reply at 2-3. That is not correct because the conversion ratio will remain one-for-one. Plaintiffs’ Opposition ¶ 6. Iacono will simply own a smaller part of AMC after the settlement consideration is distributed to the class of AMC common stockholders. *Id.*

<sup>21</sup> *AMC*, 2023 WL 2518479, at \*4.

<sup>22</sup> Ct. Ch. R. 24(b).

need not exercise its discretion to permit Iacono to intervene because there is no commonality between his and the plaintiffs' claims.

Iacono does not contend, as the plaintiffs do, that the defendants violated 8 *Del. C.* § 242 or that they would breach their fiduciary duties in effectuating the conversion and other aspects of the transaction.<sup>23</sup> He seeks to intervene merely to challenge the proposed settlement reached among the parties for the benefit of AMC's common stockholders.<sup>24</sup> "The legal and factual questions the original parties raised derive from their pleadings and any responses thereto—not the subsequent" proposed settlement of the litigation.<sup>25</sup> Moreover, Iacono is not part of that class of stockholders, and intends to intervene for the purpose of protecting his economic interest in the value of his APE units.<sup>26</sup> Iacono has no interest "in the merits of the plaintiffs' claims."<sup>27</sup>

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<sup>23</sup> *AMC*, 2023 WL 2518479, at \*4.

<sup>24</sup> *MAT Five*, 980 A.2d 399 n.17 ("Federal courts, interpreting the federal counterpart to Rule 24(b), have found that the risk of unraveling a stipulation of settlement sufficient grounds to deny permissive intervention due to the potential for 'undue prejudice' to the existing parties.").

<sup>25</sup> *AMC*, 2023 WL 2518479, at \*5.

<sup>26</sup> Motion at 1.

<sup>27</sup> *AMC*, 2023 WL 2518479, at \*4. There is also reason to deny Iacono's request to intervene as untimely because the settlement hearing is less than a week away and intervention at this late stage would unduly prejudice the parties. Ct. Ch. R. 24(b) ("In exercising its discretion [on a motion to intervene], the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."); *Matter of Liquidation of Indem. Ins. Corp.*, RRG, 2018 WL

## CONCLUSION

I recommend that the Court DENY the Second Motion to Intervene. Iacono is not a member of the class and has no direct interest at risk in the litigation. He has failed to identify any compelling reason for the Court to upend the current schedule to permit his pursuit of claims that share no common question of law or fact with plaintiffs' fiduciary and statutory claims.

Dated: June 23, 2023

PRICKETT, JONES & ELLIOTT, P.A.

/s/ Corinne Elise Amato

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6431747, at \*5 (Del. Ch. Dec. 6, 2018) (“[T]he most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case.”) (citing *Great Am. Leasing Corp. v. Republic Bank*, 2003 WL 22389464, at \*1 (Del. Ch. Oct. 3, 2003)). There is no reasonable time to adjudicate Iacono’s new claims even if there were commonality between his claims and the plaintiffs’ claims.

## CERTIFICATE OF SERVICE

I, Corinne Elise Amato, certify on this 23rd day of June, 2023, that I caused a copy of the foregoing *Report and Recommendation of Special Master Regarding Frank Iacono's Second Motion to Intervene* to be served via File & ServeXpress on the following counsel of record:

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I further certify that, on June 23, 2023, I caused a true and correct copy of the *Report and Recommendation of Special Master Regarding Frank Iacono's Second Motion to Intervene* to be served via File & ServeXpress upon the following Pro Se parties:

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