



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 MOTION FOR REARGUMENT**

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

Dated: May 1, 2023

PRELIMINARY STATEMENT

The Court has issued two opinions in this matter, and I therefore presume familiarity with the general nature of this dispute. As the Court previously explained:

The plaintiffs in this matter sought to enjoin voting by holders of AMC Preferred Equity Units (“APEs”) at a March 14, 2023, special meeting (the “Special Meeting”) of AMC Entertainment Holdings, Inc. (“AMC” or the “Company”). At the Special Meeting, AMC common and preferred stockholders were to consider proposals that would effectively convert all APEs into common stock. The plaintiffs alleged the proposals would be approved, and dispute the validity of that vote.

On February 27, the plaintiffs and defendant AMC directors stipulated and agreed that AMC would hold the Special Meeting and tabulate votes, but that the directors would not effectuate the conversion as a result of any votes of, or adjournment of, the Special Meeting pending a ruling by the Court on the plaintiffs’ motion for a preliminary injunction (the “Stipulation”).¹

...

On April 3, AMC filed a Form 8-K announcing the parties to the consolidated action reached a proposed settlement. The same day, the plaintiffs filed [the Unopposed Motion to Lift the Status Quo Order Due to the Parties’ Proposed Settlement (the “Motion”)].

As described in the Motion, the parties agreed that if the Court approves lifting the status quo order, AMC will (1) “increase the authorized number of shares of Common Stock,” (2) “convert the Company’s outstanding AMC Preferred Equity Units (‘APES’) into shares of Common Stock,” (3) and “effect a 1-to-10 reverse split of AMC equity.” Then, AMC’s pre-conversion common stockholders would

¹ *In re AMC Entm’t Holdings, Inc. Stockholder Litig.*, 2023 WL 2518479, at *1 (Del. Ch. Mar. 15, 2023) (citations omitted).

receive “one additional share of Common Stock for every seven-and-one-half (7.5) shares of Common Stock held as of the issuance.”²

On March 1, 2023, Frank Iacono (“Mr. Iacono”) filed an Emergency Motion to Intervene (the “Motion to Intervene”),³ and, on March 13, 2023, filed a proposed Verified Complaint in Intervention (the “Complaint in Intervention”).⁴ On March 15, 2023, after the parties completed briefing, the Court denied the motion in a letter opinion.⁵

On March 21, 2023, Mr. Iacono filed correspondence asking the Court to “reconsider its decision” and to “allow [Mr. Iacono] to intervene for the limited purpose” of seeking certain relief.⁶ While Mr. Iacono’s March 21, 2023 correspondence does not cite Court of Chancery Rule 59(f), Mr. Iacono’s correspondence seeks reconsideration, and I therefore consider it a motion for reargument pursuant to Rule 59(f).

² *In re AMC Entm’t Holdings, Inc. Stockholder Litig.*, 2023 WL 2784803, at *1 (Del. Ch. Apr. 5, 2023) (citations omitted).

³ Trans. ID 69251688.

⁴ Trans. ID 69329238.

⁵ *AMC*, 2023 WL 2518479.

⁶ Trans. ID 69600905. While this correspondence is not styled as a motion, for ease of reference, I refer to it herein as the “Motion for Reargument.”

On April 17, 2023, plaintiffs opposed Mr. Iacono's Motion for Reargument.⁷ On April 19, 2023, Mr. Iacono filed a reply brief in further support of his Motion for Reargument.⁸

On April 25, 2023, the Court appointed me as a Special Master in this action, which charge included making recommendations on motions to intervene.⁹ I have reviewed the (i) submissions concerning Mr. Iacono's Motion to Intervene, (ii) March 15 letter opinion denying Mr. Iacono's Motion to Intervene, and (iii) submissions concerning Mr. Iacono's Motion for Reargument. I recommend that the Court deny Mr. Iacono's Motion for Reargument.

⁷ Opposition to Frank Iacono's Motion for Reargument (Trans. ID 69834518).

⁸ Reply Brief in Further Support of Motion for Reargument (the "Reply") (Trans. ID 69854794).

⁹ See Order Appointing Special Master ¶ 1 (Trans. ID 69885808).

ANALYSIS AND RECOMMENDATION

I. THE LEGAL STANDARD

“The proper purpose of a Rule 59(f) motion for reargument is to request the trial court to reconsider whether it overlooked an applicable legal precedent or misapprehended the law or the facts in such a way as to affect the outcome of the case, not to raise new issues.”¹⁰ “The movant bears a ‘heavy burden.’”¹¹ “To succeed and obtain reargument, the moving party must demonstrate that the Court’s decision was predicated upon a misunderstanding of a material fact or a misapplication of the law.”¹² A Rule 59(f) motion is “not a mechanism to present new arguments or to relitigate claims already considered by the Court.”¹³

¹⁰ *Chrin v. Ibrix Inc.*, 70 A.3d 205, 2012 WL 6737780, at *2 (Del. 2012) (TABLE).

¹¹ *ITG Brands, LLC v. Reynolds Am., Inc.*, 2022 WL 16825874, at *1 (Del. Ch. Nov. 7, 2022) (quoting *In re ML/EQ Real Est. P’ship Litig.*, 2000 WL 364188, at *1 (Del. Ch. Mar. 22, 2000)).

¹² *Fisk Ventures, LLC v. Segal*, 2008 WL 2721743, at *1 (Del. Ch. July 3, 2008) (internal quotation marks omitted), *aff’d*, 984 A.2d 124 (Del. 2009) (TABLE).

¹³ *Cabela’s LLC v. Wellman*, 2018 WL 6680972, at *1 (Del. Ch. Dec. 19, 2018); *see also Quantlab Grp. GP, LLC v. Eames*, 2018 WL 5778445, at *1 (Del. Ch. Nov. 2, 2018) (observing that a motion for reargument will be denied where it seeks to either “rehash old arguments or invent new ones”).

II. MR. IACONO’S MOTION FOR REARGUMENT DOES NOT MEET THE HIGH BURDEN RULE 59(F) IMPOSES

In his Motion for Reargument, Mr. Iacono asks the Court to reconsider its March 15 letter opinion, (i) asserting that the Court erred in denying permissive intervention¹⁴ and (ii) raising new arguments and facts regarding a bond request and recent events. I address these arguments in turn.

A. The Court Did Not Misapprehend Delaware Law When It Denied Mr. Iacono Permissive Intervention

Mr. Iacono asserts that the Court misapprehended the law concerning Rule 24(b) when it denied his request for permissive intervention in part because plaintiffs did “not seek to wield equity against” him.¹⁵ He argues that he is not aware of any case where a court denied a motion to intervene “solely because the would-be intervenor was not the party enjoined by an equitable order.”¹⁶ This argument fails because it disregards the context surrounding the quoted phrase.

The Court held that “plaintiffs have not asserted a claim or enforced a right against Mr. Iacono: they do not seek to wield equity against him,”¹⁷ meaning Mr. Iacono lacks standing to pursue a laches defense on behalf of defendants against

¹⁴ Mr. Iacono does not seek reargument of his request to intervene as of right that the Court rejected.

¹⁵ Motion for Reargument at 2 (quoting *AMC*, 2023 WL 2518479, at *5).

¹⁶ *Id.*

¹⁷ *AMC*, 2023 WL 2518479, at *5.

plaintiffs.¹⁸ Mr. Iacono fails to demonstrate how the Court misapplied the law regarding Rule 24(b) when it held that he lacked standing to pursue a laches defense.¹⁹

Mr. Iacono relies on *Sierra Club v. Espy*, 18 F.3d 1202 (5th Cir. 1994), arguing that intervention may be granted “when the practical effect of the equity is to impair a non-party.”²⁰ That general proposition may be true, but it is not applicable here. Mr. Iacono could not convert his APEs into shares of AMC common stock prior to or after entry of the *status quo* order.²¹ AMC agreed to an interim injunction that delayed conversion of all APEs.²² As the Court explained:

¹⁸ See *id.* at *4-6.

¹⁹ It is also unclear whether Mr. Iacono still seeks relief and in what form even if he were permitted to intervene. In his Complaint in Intervention, Mr. Iacono sought relief “no later than April 4, 2023.” See Complaint in Intervention, Prayer for Relief at ¶ 3. In his Motion for Reargument (at 2-3), Mr. Iacono argued that relief was needed prior to April 21, 2023. Those dates have passed. In addition, the parties filed a stipulation of settlement on April 27, 2023, and a settlement hearing is scheduled to proceed potentially as early as June 29-30, 2023. Trans. ID 69906464. Thus, even if Mr. Iacono could establish standing to pursue a laches defense, these developments cast doubt on the utility of any such intervention.

²⁰ Motion for Reargument at 2. This argument is also flawed because it is premised on Mr. Iacono taking the word “equity” out of context from the Court’s March 15 letter opinion.

²¹ For this reason, Mr. Iacono’s reliance on *Leonard E. Warner, Inc. v. Nissan Motor Corp.*, 311 S.E.2d 1 (N.C. Ct. App. 1984), is also misplaced. There, the injunction directly harmed the intervenor because it was unable to open for business during the injunction. See *id.* at 2.

²² Order Concerning Plaintiffs’ Motions for Expedited Proceedings and Entry of *Status Quo* Order (Trans. ID 69229170); AMC, 2023 WL 2518479, at *1.

“The defendants do not owe Mr. Iacono, as an optionholder, a duty to consummate the proposed transaction before his options expire. It is unclear that they would necessarily do so if the plaintiffs’ claims were dismissed.”²³ Thus, *Sierra Club* provides no basis to conclude that the Court misapprehended Delaware law in holding that Mr. Iacono did not have standing to assert a laches defense and, therefore, could not intervene in this action.²⁴

B. Mr. Iacono’s New Arguments and Facts Are Procedurally Improper

Mr. Iacono asserts in his Motion for Reargument that plaintiffs should be compelled to post a bond of \$235,000, reflecting his alleged maximum potential loss from the delayed conversion.²⁵ He did not present this bond request in his Motion to Intervene or reply brief.²⁶ A new argument ordinarily will not be considered on a

²³ *AMC*, 2023 WL 2518479, at *5 n.32.

²⁴ *Sierra Club* is also distinguishable because the intervenors represented “most of the purchasers of timber” who would be affected by the lawsuit between Sierra Club and the Secretary of Agriculture. *Sierra Club*, 18 F.3d at 1203. The Fifth Circuit Court of Appeals noted that the intervenors’ “economic interests” in the litigation were “obvious.” *Id.* at 1207. Here, the Court described Mr. Iacono’s economic interest in this litigation as “collateral and indirect.” *AMC*, 2023 WL 2518479, at *4. Mr. Iacono has not proffered any basis to suggest that the Court misapprehended facts or law when it reached that conclusion.

²⁵ Motion for Reargument at 4.

²⁶ Reply Brief in Further Support of Emergency Motion to Intervene (Trans. ID 69328217). Mr. Iacono included a request for a bond in the Prayer for Relief in his Complaint in Intervention. That passing reference in a proposed complaint, and not in any brief, is not sufficient to consider the argument preserved for reargument. *Filasky v. Von Schnurbein*, 1992 WL 187619, at *1 (Del. Ch. July 29,

Rule 59(f) motion for reargument,²⁷ but even if I consider it, it does not provide a basis to reconsider the Court’s March 15 letter opinion.

Mr. Iacono’s request for a bond does not fall within the parameters of Rule 65, which requires a bond to be posted when another party is restrained. “[T]he purpose of an injunction bond [is] to protect a party that is wrongfully enjoined.”²⁸ No party has restrained Mr. Iacono.²⁹ His bond proposal lacks merit for many of the same reasons that the Court denied intervention, i.e., that defendants did not owe him any duty and he lacks standing.

Mr. Iacono also asserts that “changed facts” support granting his Motion for Reargument, including supposed facts concerning the AMC stockholder vote and the litigation history of Allegheny County Employees’ Retirement System.³⁰ New

1992) (denying a motion for reargument where a plaintiff had first raised an argument in their reargument motion and, therefore, had “waived their right to litigate that issue”).

²⁷ *Cabela’s*, 2018 WL 6680972, at *1 (Rule 59(f) is “not a mechanism to present new arguments or to relitigate claims already considered by the Court”); *Sunrise Ventures, LLC v. Rehoboth Canal Ventures, LLC*, 2010 WL 975581, at *1 (Del. Ch. Mar. 4, 2010), *aff’d*, 7 A.3d 485 (Del. 2010) (TABLE) (holding an argument that was not previously raised “is therefore waived, and the motion must be denied for that reason alone”).

²⁸ *Guzzetta v. Serv. Corp.*, 7 A.3d 467, 471 (Del. 2010).

²⁹ *AMC*, 2023 WL 2518479, at *5 (explaining that Mr. Iacono “is not an adverse party that can cry out from prejudicial delay”).

³⁰ *See Reply* at 2-5.

or “changed” facts generally do not provide a basis to grant a Rule 59(f) motion.³¹ I see no basis to depart from this general standard here, where many of the “changed facts” concern a recently disclosed stipulation of settlement to which Mr. Iacono may object and that the Court will evaluate in due course.³²

CONCLUSION

For the reasons set forth herein, I recommend that the Court DENY Mr. Iacono’s Motion for Reargument.

Dated: May 1, 2023

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/s/ Corinne Elise Amato

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Special Master

³¹ *Those Certain Underwriters at Lloyd’s, London v. Nat’l Installments Ins. Servs, Inc.*, 2008 WL 2133417, at *1 (Del. Ch. May 21, 2008) (“Reargument under Court of Chancery Rule 59(f) is only available to re-examine the existing record; therefore, new evidence generally will not be considered on a Rule 59(f) motion.”) (citation omitted); *Miles, Inc. v. Cookson Am., Inc.*, 677 A.2d 505, 506 (Del. Ch. 1995) (same).

³² *See In re TD Banknorth*, 938 A.2d 654, 662 (Del. Ch. 2007) (noting the “orderly procedure of requiring an intervenor to voice its concerns at the settlement hearing”); *see also In re Home Shopping Network, Inc. S’holder Litig.*, 1994 WL 560801, at *1 (Del. Ch. Oct. 4, 1994) (denying a motion to intervene until the settlement hearing).

CERTIFICATE OF SERVICE

I, Corinne Elise Amato, do hereby certify on this 1st day of May, 2023, that I caused a copy of the foregoing *Report and Recommendation of Special Master Regarding Frank Iacono's Motion for Reargument* to be served via File & ServeXpress on the following counsel of record:

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I further certify that, on May 1, 2023, I caused and true and correct copy of the foregoing to be served via email by File and ServeExpress on the following:

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