



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 BRIAN TUTTLE'S MOTION TO INTERVENE**

PRICKETT, JONES & ELLIOTT, P.A.
Corinne Elise Amato (#4982)
1310 N. King Street
Wilmington, Delaware 19801
(302) 888-6500

Special Master

Dated: May 8, 2023

PRELIMINARY STATEMENT

The Court has issued two opinions in this matter, and I have issued a report and recommendation.¹ I incorporate the factual recitation from my prior report herein and presume familiarity with the general nature of this dispute.

On April 13, 2023, Brian Tuttle (“Mr. Tuttle”) filed correspondence with the Court that requested, among other things, to intervene in this action.² On April 17, 2023, plaintiffs filed an Opposition to Proposed Intervenor Brian Tuttle’s Motion to Intervene (the “Opposition”).³ On April 19, 2023, Mr. Tuttle filed his Response to Plaintiff’s (sic) Opposition to Intervene (the “Reply”).⁴

On April 25, 2023, the Court appointed me as a Special Master in this action, which charge includes making recommendations on motions to intervene.⁵ I have reviewed the Motion to Intervene, the Opposition, the Reply, and the parties’ May

¹ Trans. ID 69924744.

² Trans. ID 69818696. While this correspondence is not styled as a motion and does not reference Court of Chancery Rule 24, I consider it a motion to intervene and refer to it as the “Motion to Intervene.” Mr. Tuttle asserts that he holds AMC Entertainment Holdings, Inc. (“AMC”) common stock. Motion to Intervene at 1. Mr. Tuttle has not verified that statement under oath, but I assume it is true for purposes of this report and recommendation.

³ Trans. ID 69835165.

⁴ Trans. ID 69855737.

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

3, 2023 correspondence.⁶ I recommend that the Court deny Mr. Tuttle's Motion to Intervene.

⁶ Trans. ID 69948706.

ANALYSIS AND RECOMMENDATION

Mr. Tuttle seeks to intervene, pursuant to Court of Chancery Rule 24(b), which governs permissive intervention.⁷ Rule 24(b) provides:⁸

Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) When a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

I recommend that the Court deny the Motion to Intervene for two reasons.

First, Mr. Tuttle did not serve the required “pleading setting forth the claim or defense for which intervention is sought.”⁹ This “requirement is not merely a procedural formality. Rather, it provides a basis on which the Court may assess the request to intervene.”¹⁰ This deficiency alone provides a basis to deny the Motion to Intervene.

Second, the upcoming settlement hearing is a more appropriate forum for Mr. Tuttle to voice his concerns. Mr. Tuttle claims he has knowledge of certain events

⁷ Reply at ¶ 2. Mr. Tuttle does not seek to intervene as a matter of right pursuant to Rule 24(a).

⁸ Mr. Tuttle has not identified any statute conferring a conditional right to intervene.

⁹ Ct. Ch. R. 24(c) (“A person desiring to intervene shall serve a motion to intervene . . . [which] **shall** be accompanied by a pleading setting forth the claim or defense for which intervention is sought.”) (emphasis added).

¹⁰ *Southpaw Credit Opportunity Master Fund LP v. Advanced Battery Techs., Inc.*, 2015 WL 915486, at *12 (Del. Ch. Feb. 26, 2015) (Master’s Report).

that have occurred or that he has participated in and that defendants violated 8 *Del. C.* § 242.¹¹ These issues generally concern the quality of the allegations and claims, and whether other claims may exist. Mr. Tuttle further argues that (i) permissive intervention would benefit the class of AMC stockholders (the “Class”), (ii) plaintiffs’ representation of the Class has been inadequate, and (iii) the proposed settlement does not provide a fair remedy.¹²

Intervention on these issues will not benefit the Class at this stage and may prejudice the Class’s ability to receive the benefit of the settlement if the Court ultimately approves it.¹³ On April 27, 2023, the parties filed a stipulation of settlement, and a settlement hearing may occur as early as June 29-30, 2023 (the

¹¹ Motion to Intervene at 1-4.

¹² Reply ¶¶ 5-29.

¹³ Mr. Tuttle seeks to intervene “even if only for the limited purposes of adjudicating” the declaratory relief sought by plaintiffs. *Id.* ¶ 10. Mr. Tuttle has not filed a proposed complaint in intervention, nor has he sought expedited relief. Accordingly, there is little prospect that, if permitted to intervene, Mr. Tuttle could litigate his claims to a conclusion prior to June 30, 2023. Permitting Mr. Tuttle to intervene might also delay adjudication of the settlement, unduly prejudicing the parties’ interests in resolving the litigation. Mr. Tuttle, however, will not be unduly prejudiced if his Motion to Intervene is denied, because he will have an opportunity to object to the settlement and the claims he seeks to pursue will not be released, if at all, until after the Court determines whether or not to approve the settlement.

“Settlement Hearing”).¹⁴ At or after the Settlement Hearing, the Court will, among other things:

determine whether to finally certify the Settlement Class for settlement purposes only, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2);

determine whether Plaintiffs and Class Counsel have adequately represented the Settlement Class, and whether Plaintiffs should be finally appointed as representatives for the Settlement Class and Class Counsel should be finally appointed as counsel for the Settlement Class;

determine whether the proposed Settlement should be approved as fair, reasonable, and adequate to the Settlement Class and in the best interests of the Settlement Class;

determine whether the Action should be dismissed with prejudice and the Releases provided under the Stipulation should be granted[.]¹⁵

Accordingly, at the Settlement Hearing, the Court will analyze the issues raised by Mr. Tuttle in his Motion to Intervene—the strength and weakness of the claims, whether plaintiffs and their counsel adequately represented the Class, and whether the proposed settlement is fair, adequate and reasonable and in the best interests of the Class.¹⁶

¹⁴ See Scheduling Order With Respect to Notice and Settlement ¶ 6 (Trans. ID 69929995) (“Scheduling Order”).

¹⁵ *Id.*

¹⁶ Mr. Tuttle argues that intervention is appropriate because the parties sought to lift the *Status Quo* Order and “move forward on an unnoticed settlement.” Reply ¶¶ 8-10. The *Status Quo* Order, however, remains in effect. The parties filed a stipulation of settlement. And notice has been or soon will be provided to the Class. See *In re*

Mr. Tuttle may file a formal, written objection to the terms of the settlement in advance of the Settlement Hearing,¹⁷ which, if successful, might allow Mr. Tuttle an opportunity to pursue his claims. Thus, the more efficient approach is to deny the Motion to Intervene and for Mr. Tuttle to file an objection to the settlement, if he so chooses.¹⁸

CONCLUSION

For the reasons set forth herein, I recommend that the Court DENY Mr. Tuttle's Motion to Intervene.

Dated: May 8, 2023

PRICKETT, JONES & ELLIOTT, P.A.

/s/ Corinne Elise Amato

Corinne Elise Amato (#4982)
1310 N. King Street
Wilmington, Delaware 19801
(302) 888-6500

Special Master

AMC Entm't Holdings, Inc. Stockholder Litig., 2023 WL 2784803, at *1 (Del. Ch. Apr. 5, 2023); Trans. IDs 69906464 & 69929995.

¹⁷ Scheduling Order ¶ 16.

¹⁸ 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, certify on this 8th day of May, 2023, that I caused a copy of the foregoing *Report and Recommendation of Special Master Regarding Brian Tuttle's Motion to Intervene* to be served via File & ServeXpress on the following counsel of record:

Michael J. Barry, Esq.
Kelly L. Tucker, Esq.
Jason M. Avellino, Esq.
GRANT & EISENHOFER P.A.
123 Justison Street, 7th Floor
Wilmington, DE 19801

Thomas Curry, Esq.
SAXENA WHITE P.A.
824 N. Market St., Suite 1003
Wilmington, DE 19801

Raymond J. DiCamillo, Esq.
Kevin M. Gallagher, Esq.
Matthew W. Murphy, Esq.
Edmond S. Kim, Esq.
Adriane M. Kappauf, Esq.
RICHARDS, LAYTON &
FINGER, P.A.
920 North King Street
Wilmington, DE 19801

Gregory V. Varallo, Esq.
Daniel E. Meyer, Esq.
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
500 Delaware Avenue, Suite 901
Wilmington, DE 19801

I further certify that, on May 8, 2023, I caused a copy of the *Report and Recommendation of Special Master Regarding Brian Tuttle's Motion to Intervene* to be served via email upon the following *pro se* party:

Brian Tuttle
K6v9581k3@gmail.com

/s/ Corinne Elise Amato
Corinne Elise Amato (#4982)