



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 ETAN LEIBOVITZ'S RULE 5.1
NOTICE OF CHALLENGE AND OMNIBUS MOTION**

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Special Master

Dated: May 23, 2023

PRELIMINARY STATEMENT

The Court has issued two opinions in this matter. I have also issued reports and recommendations, including one in which I set forth 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.

BACKGROUND

On May 9, 2023, Etan Leibovitz filed correspondence with the Court, requesting (i) an unredacted version of the Verified Complaint in C.A. No. 2023-0216-MTZ (the “Rule 5.1 Challenge”), (ii) all discovery (the “Discovery Request”), and (iii) affidavits from defendants’ counsel and Adam Aron (“Aron”) (the “Affidavit Request”).²

Mr. Leibovitz’s Rule 5.1 Challenge is now moot. On May 18, 2023, the Court ordered that the Verified Complaint be filed publicly, thereby granting the relief sought in the Rule 5.1 Challenge.³

The Discovery Request is also moot. I recommended, on May 19, 2023, that objectors have access to the existing discovery record.⁴ The Court adopted that

¹ Trans. ID 69924744.

² Trans. ID 69983577. Mr. Leibovitz asked for the correspondence to be considered a motion, and I will refer to it herein as the “Leibovitz Motion.”

³ Trans. ID 70041360.

⁴ Report and Recommendation of Special Master Regarding Class Member Access to the Discovery Record at 4-8 (Trans. ID 70051000).

recommendation on May 20, 2023,⁵ thereby granting the relief sought in the Discovery Request.

As set forth below, I recommend that the Court deny the remaining Affidavit Request.⁶

ANALYSIS AND RECOMMENDATION

In the Affidavit Request, Mr. Leibovitz takes issue with defendants' counsel's statement regarding an estimation of 3.8 million AMC Entertainment Holdings, Inc. ("AMC") stockholders, during an April 25, 2023 Court conference,⁷ and Aron's statements on Twitter that AMC has conducted six share counts.⁸ Mr. Leibovitz argues that these statements were "exercise[s] in rhetorical flourish" and asks that both statements be reduced to sworn affidavits.⁹

Mr. Leibovitz fails to proffer any basis to conclude that the statements were false or any authority for the Affidavit Request. For these reasons, I recommend that the Court deny the Affidavit Request.

⁵ Trans. ID 70053696.

⁶ The Court appointed me as a Special Master in this action. *See* Order Appointing Special Master ¶ 1 (Trans. ID 69885808); Letter to Counsel & Interested Parties from Vice Chancellor Zurn, dated May 2, 2023, Regarding Special Master's Authority (Trans. ID 69935078). A recommendation concerning the Affidavit Request falls within the scope of my authority.

⁷ Leibovitz Motion at 2-3.

⁸ *Id.* at 3.

⁹ *Id.*

In the event that the Affidavit Request could be construed as a request for additional discovery, I recommend it be denied because the Lebovitz Motion fails to make the requisite showing for such relief.¹⁰

CONCLUSION

I recommend that the Court deny the Affidavit Request in the Lebovitz Motion. The Rule 5.1 Challenge and the Discovery Request are moot.

Dated: May 23, 2023

PRICKETT, JONES & ELLIOTT, P.A.

/s/ Corinne Elise Amato

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¹⁰ An objector may not take discovery without a “*prima facie* showing of bad faith or conflicting interests” or that a class representative “failed to properly explore through discovery or otherwise the merits of the case and defenses” before agreeing to the settlement. *In re Amsted Indus., Inc. Litig.*, 521 A.2d 1104, 1108-09 (Del. Ch. 1986).

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 Etan Leibovitz's Rule 5.1 Notice of Challenge and Omnibus Motion* 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 Etan Leibovitz's Rule 5.1 Notice of Challenge and Omnibus Motion* to be served via FedEx upon the following

Pro Se party:

Via FedEx:
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/s/ Corinne Elise Amato
Corinne Elise Amato (#4982)