



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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

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

Plaintiffs submit this opposition to Frank Iacono's ("Iacono") Second Motion to Intervene (the "Second Motion").

**PRELIMINARY STATEMENT**<sup>1</sup>

1. After the Court denied his first Motion to Intervene (the "First Motion"),<sup>2</sup> Iacono tweaked his arguments and is trying again. His Second Motion fares no better than his First and should be denied.

2. Iacono filed his First Motion on March 1, 2023, less than two weeks after this action was initiated, seeking to intervene on the basis that the Court's order dated February 27, 2023, which maintained AMC's *status quo* capitalization (Trans. ID 69229170, the "*Status Quo* Order"), threatened Iacono's trading strategy. Following the revelation that the Board would be submitting stockholder proposals

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<sup>1</sup> Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the operative Verified Stockholder Class Action Complaint (Trans. ID 69170312, the "Complaint"), all emphasis is added, and citations and internal quotation marks are omitted.

<sup>2</sup> Trans. ID 69251688.

to stockholders that would cause the conversion of APEs into Common Stock, Iacono bought large amounts of APEs and put options on Common Stock with an expiration date of April 21, 2023. Iacono moved to intervene on the basis that his put options—*i.e.*, bets against the value of Common Stock—would have expired before the preliminary injunction hearing then scheduled for April 27, 2023, and might consequently end up worthless.

3. The Court denied Iacono’s First Motion on March 15, 2023.<sup>3</sup> For intervention to be granted, the Court observed, “the intervenor’s interest must be in the claims in the action in which they wish to intervene, not in the effects that action might have on the intervenor’s economic interests.”<sup>4</sup> The Court found that Iacono had not identified an interest “sufficiently related to the transaction at the heart of this matter.”<sup>5</sup>

4. With his Second Motion, Iacono effectively challenges the proposed Settlement on the basis that its approval would diminish the value of his APE arbitrage play. This second attempt, at base sounding in disappointment with the outcome of his own investment strategy, fares no better than his first.

5. Should the settlement be approved, among other things, AMC will

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<sup>3</sup> Trans. ID 69439394.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> *Id.* at 8.

execute the Reverse Stock Split and convert APEs into shares of Common Stock (the “Conversion”). Following the Reverse Split and Conversion, those class members who held Common Stock after the Reverse Split but immediately prior to the Conversion will receive one additional share of AMC Common Stock for every 7.5 shares of Common Stock they held at that time.

6. Iacono argues that the proposed Settlement and applicable payment, if approved, will negatively impact the conversion ratio of his APEs because the Settlement consideration will supposedly change the conversion ratio of APEs to Common Stock from 1-to-1 to 1-to-0.88. This is plainly false. Iacono will receive one share of Common Stock for every APE he holds at the time of the Conversion. That the Company may thereafter issue Settlement consideration to holders of Common Stock has nothing to do with the Conversion ratio, which remains 1-to-1. Iacono would simply own a lesser percentage of the Company after the recapitalization than he wants. As the Court has already explained—directly in response to his First Motion—the effect that an action might have on the intervenor’s economic interests is not a basis for intervention.

### **ARGUMENT**

7. Iacono’s second bite at the intervention apple fares no better than his first. He sets forth no basis for intervention as of right or permissive intervention. Accordingly, his Second Motion should be denied.

**A. Iacono Has No Right to Intervene.**

8. An applicant may intervene as of right where “a statute confers an unconditional right to intervene” or “the applicant claims an interest relating to the property or transaction which is the subject of the Action and the applicant 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>6</sup> “In order to constitute a protectable interest under Rule 24(a)(2), the intervenor’s claim must bear a sufficiently close relationship to the dispute between the original litigants. Thus, the alleged interest must be ‘direct’ and not ‘remote’ or ‘contingent.’”<sup>7</sup> Iacono does not come close to meeting this standard.

9. Iacono argues that he is entitled to mandatory intervention because he has “an interest in the property and the transaction which is the subject matter of the above-captioned litigation”—namely, the APEs and the Conversion.<sup>8</sup> Iacono’s argument is without merit.

10. In its order denying his first motion to intervene, the Court explained

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<sup>6</sup> Del. Ch. Ct. R. 24(a).

<sup>7</sup> *Allstate Ins. Co. v. Speight*, 1992 WL 354091, at \*2 (Del. Super. Ct. Nov. 10, 1992).

<sup>8</sup> Second Mot. at 3. Iacono does not identify any statute conferring him a right to intervene.

that “the intervenor’s interest must be in the claims in the action in which they wish to intervene, not in the effects that action might have on the intervenor’s economic interests.”<sup>9</sup> This is precisely the basis for Iacono’s claim for mandatory intervention—the effect that the proposed Settlement, if approved, will have upon his APEs. Iacono concedes as much, arguing that, if the proposed Settlement is approved, the conversion ratio of his APEs will be negatively impacted.<sup>10</sup> Indeed, the only claim Iacono expressly seeks to bring against Plaintiffs in his attached Rule 24(a) complaint are “Wrongful Interference With *Economic Advantage* Against the Plaintiffs and the Director Defendants.”<sup>11</sup>

11. Iacono’s claimed interest are even more attenuated than those cited by the Court when it denied his First Motion. For example, in *Rollins Cablevue, Inc. v. Saienni Enterprises*,<sup>12</sup> as the Court explained, “a business partner of the defendant sought to intervene in an action to determine the validity of a contract between the defendant and the plaintiff: if the contract was invalid, the business partner would receive the defendant’s business instead of the plaintiff.”<sup>13</sup> The *Rollins* Court denied

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<sup>9</sup> Trans. ID 69439394 at 7 (collecting citations).

<sup>10</sup> Second Mot. at 2-3 (“The Intervenor stands to incur an economic loss and suffer a diminution of his legal rights as the result of the Proposed Settlement.”).

<sup>11</sup> Intervenor’s Verified Complaint in Intervention, Count III (emphasis added).

<sup>12</sup> 115 F.R.D. 484 (D. Del. 1986); *see* Trans. ID 69439394 at 6-7.

<sup>13</sup> Trans. ID 69439394 at 6-7 (citing 115 F.R.D. at 487).

intervention on these facts, holding that the “use of intervention to ratify an independent transaction, which is not the subject matter of the litigation in which intervention is sought, does not fall within the ‘relating to the property or transaction which is the subject of the action.’” Here, Iacono, unlike the proposed intervenor in *Rollins*, has no direct interest in the matter of the litigation, just an indirect interest in how the proposed Settlement might affect his APEs.

12. On this point, Iacono’s assertion that the proposed Settlement, if approved, will result in his APEs converting into Common Stock on a 1-to-0.88 basis, is plainly wrong.<sup>14</sup> If the Court approves the proposed Settlement, then AMC will execute the Reverse Stock Split and the Conversion, with APEs converting on a 1-to-1 basis to Common Stock.<sup>15</sup> Following the Reverse Stock Split and Conversion, 995,406,413 APEs will convert into 99,540,641 shares of Common Stock—*i.e.*, they will convert on a 1-to-1 basis following the Reverse Stock Split. The proposed Settlement, which contemplates payment of additional Common Stock shares, would compensate holders of Common Stock for the economic and voting dilution they would suffer from the Conversion; in no way does it alter the

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<sup>14</sup> Iacono does not provide any analysis underpinning his assertion of the conversion ratio.

<sup>15</sup> Technically, the Reverse Stock Split modifies the conversion formula for APEs into Common Stock to provide that 10 APEs convert into 1 share of Common Stock.

conversion ratio.<sup>16</sup>

13. In addition, the proposed Settlement does not provide for a dividend payment to holders of Common Stock, as Iacono suggests.<sup>17</sup> As expressly stated in the Stipulation, the proposed Settlement provides for a “Settlement Payment” of “one share of Common Stock for every 7.5 shares of Common Stock owned by record holders of Common Stock as of the Settlement Class Time (after giving effect to the Reverse Stock Split).”<sup>18</sup> This payment is intended to compensate the Common Stockholders for the harm they suffered from Defendants’ attempt to thwart their franchise rights. It is not a special dividend issued to holders of Common Stock.

**B. Iacono Has Stated No Basis for Permissive Intervention.**

14. At the Court’s sound discretion, it may allow permissive intervention where “a statute confers a conditional right” or “an applicant’s claim or defense and

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<sup>16</sup> Iacono argues that the Company and the Director Defendants owe him fiduciary duties to take steps to convert APE into Common Stock. Second Mot. at 4. It is not clear, and Iacono does not address it, that this is correct, as the right to conversion is a right exclusive to the APEs (and the Preferred Stock shares underlying them). *See Frederick Hsu Living Tr. v. ODN Holding Corp.*, No. 12108-VCL, 2017 WL 1437308, at \*21 (Del. Ch. Apr. 14, 2017) (“A board does not owe fiduciary duties to preferred stockholders when considering whether or not to take corporate action that might trigger or circumvent the preferred stockholders’ contractual rights.” (citation omitted)).

<sup>17</sup> Second Mot. at 4.

<sup>18</sup> Stipulation, ¶(aa).

the main action have a question of law or fact in common.”<sup>19</sup> “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.”<sup>20</sup>

15. Iacono’s basis for permissive intervention is the same as for mandatory intervention—he is upset at the effect the proposed Settlement will have on his arbitrage play. This is no basis for permissive intervention.<sup>21</sup>

16. Intervention here also would “prejudice the adjudication of the rights of the original parties.”<sup>22</sup> On May 1, 2023, the Court entered the Scheduling Order with Respect to Notice and Settlement Hearing, which set certain deadlines for the parties, objectors, and the Special Master.<sup>23</sup> The next deadline is June 21, 2023, by which the Special Master must “provide the Court with a summary of the Submissions and the Special Master’s recommendations as to how the Submissions should inform the Court’s decision to approve or deny the proposed Settlement.”<sup>24</sup> The hearing at which the Court will consider whether to approve the Settlement

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<sup>19</sup> Del. Ch. Ct. R. 24(b).

<sup>20</sup> *Id.*

<sup>21</sup> As was the case with mandatory intervention, Iacono does not cite any statute conferring a conditional right to intervene.

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

<sup>23</sup> Trans. ID 69929995.

<sup>24</sup> *Id.* ¶22.



follows shortly thereafter, on June 29 and 30—only twenty days away.<sup>25</sup>

17. At this point, permitting Iacono's intervention would force the parties, the Special Master, and the Court to scramble to accommodate him in what already has been a complicated action. There are no reasons why Iacono could not have filed his motion to intervene earlier. Putting aside that Iacono did not see fit to include his current arguments in his First Motion, he waited almost one month since the filing of the Stipulation (April 27), over one and one-half months since the proposed Settlement was announced (April 3), and over two months since the denial of his First Motion (March 15) to file his Second Motion. Permitting his intervention at this point would cause undue prejudice to the Parties.

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<sup>25</sup> *Id.* ¶6.

## **CONCLUSION**

For the foregoing reasons, Plaintiffs Iacono's Second Motion should be denied.

Dated: June 9, 2023

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## **CERTIFICATE OF SERVICE**

I, Gregory V. Varallo, hereby certify that, on June 9, 2023, a copy of the foregoing *Plaintiffs' Opposition to Frank Iacono's Second Motion to Intervene* was filed and served electronically via File & ServeXpress upon the following counsel of record:

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