

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE AMC ENTERTAINMENT
HOLDINGS, INC. STOCKHOLDER
LITIGATION

)
) No. 290,2023
)

) On Appeal from C.A. No. 2023-
) 0215-MTZ in the Court of Chancery
) of the State of Delaware
)

**APPELLANT ROSE IZZO’S MOTION FOR
STATUS QUO ORDER PENDING APPEAL**

Objector Below-Appellant Rose Izzo (“Objector”) hereby moves pursuant to Supreme Court Rule 32 for restoration of a status quo order pending resolution of this interlocutory appeal. See *Notice of Appeal from Interlocutory Orders* (“NOA”).

BACKGROUND

1. As explained in Objector’s application for interlocutory appeal (NOA, Ex. 5, the “Application”), the decisions below will permit AMC Entertainment Holdings, Inc. (“AMC”) to convert preferred equity units (“APEs”) into Common stock (the “Conversion”). Plaintiffs- and Defendants-Below initially consented to a status quo order preventing the consummation of this transaction. NOA, Ex. 3 at 21 (the “First Opinion”).

2. Plaintiffs and Defendants displayed a “habit of moving slowly while pressing [the Trial Court] for expedited treatment.” NOA, Ex. 4 at 5 n.11 (the “Second Opinion”). Anticipating that Defendants—despite their “torpor” as litigants (*id.*)—would pounce if the settlement were approved, Objector moved to

maintain the status quo order pending appeal. *Id.* at 102-09. The Trial Court denied that motion. NOA, Ex. 2. One business day after the Trial Court lifted its status quo order, Defendants announced their intent to consummate the Conversion within approximately ten days. *See* Application, Ex. A.

3. Defendants' haste necessitates an urgent judicial response. "It will ... be difficult, if not impossible, to unwind" the Conversion if this Court rejects the settlement after a final order. Second Op. at 107. Plaintiffs initially sought to enjoin the Conversion. *Id.* at 79. A status quo order is the only means by which this Court may exercise appellate review while that remedy is still available.¹

ARGUMENT

4. A decision concerning a stay pending appeal is "reviewable by this Court." Supr. Ct. R. 32(a). A trial court's discretion is controlled by *Kirpat* factors:

- (1) the likelihood of success on the merits of the appeal;
- (2) whether Plaintiffs would suffer irreparable harm if the injunction is not granted; (3) whether Defendants would suffer substantial harm if the injunction is granted; and (4) whether the injunction would serve the public interest.

¹ This appeal and motion rise and fall together. If the Court determines not to stay the Conversion pending appeal, judicial economy commends an appeal following a final judgment. Thus, if this motion is denied, Objector intends to voluntarily dismiss the appeal without prejudice pursuant to Rule 29(a) and appeal following a final judgment. *See Zachman v. Real Time Cloud Services, LLC*, 2020 WL 2499934 (Del. May 13, 2020).

Lynch v. Gonzalez, 2020 WL 5648567, at *4 (Del. Ch. Sept. 22, 2020) (citing *Kirpat, Inc. v. Del. Alcoholic Beverage Control Comm’n*, 741 A.2d 356 (Del. 1998)).

I. An Appeal Raises Fair Ground for Litigation.

5. The likelihood of success on appeal factor “cannot be interpreted literally or in a vacuum” as “a literal reading ... would lead most probably to consistent denials of stay motions ... because the trial court would be required first to confess error” *Kirpat*, 751 A.2d at 358 (quotations omitted). Instead, an appeal must raise “a substantial question that is a fair ground for litigation and more deliberative investigation.” *Id.* (quotation omitted).

6. This appeal will address multiple substantial questions, one of which the decisions below erroneously reject. Second Op. at 105-06. The First Opinion reasons that the settlement does not extinguish future claims because its release is cabined by two “limitations”: that claims must “relate[] to” matters in the complaints and must “relate to ownership” of AMC stock during the Class period. First Op. at 58 n.186. Yet, AMC’s August 14 8-K, despite post-dating settlement approval, meets both criteria because *the Class Period is not over*. Application ¶ 28. Defendants currently enjoy a *carte blanche* exemption, even from federal securities claims, for statements concerning the settlement made over the next week. *Id.* It is at least “fair ground” to litigate whether this comports with Delaware law. *Id.*

7. Likewise, an appeal will address important issues of representation, including whether a non-opt-out settlement is appropriate where (a) a Delaware corporation's stockholders are heavily divided; (b) thousands of stockholders have expressed a desire to opt-out; and (c) Plaintiffs are not representative of the retail investors in whose name they sued. *Id.* ¶ 31.

II. Stockholders Will Suffer Irreparable Injury.

8. The Trial Court agreed that this *Kirpat* factor favors a stay. Second Opinion at 106-07. The Conversion cannot be undone, and if this Court rejects the settlement following the Conversion, a clawback of the settlement consideration may be impossible on remand.

III. The Parties Will Suffer No Substantial Harm.

9. The Trial Court overestimated the potential harm from a brief stay. The Second Opinion expresses concern that AMC may need to raise equity capital—but does not consider that the General Assembly's amendment to DGCL § 242 provides a path to do so without the Conversion or the sale of additional APEs. *Compare id.* at 107 *with* Application ¶ 24. As for the threat of bankruptcy, the Second Opinion discusses AMC's latest quarterly results without noting that AMC experienced its first profitable quarter since 2019. *Id.* at 85-86. Virtually every reported financial indicator has improved since February 2023, when Plaintiffs considered bankruptcy

concerns to be “in the rearview mirror” (Application ¶ 5) and the parties consented to a status quo order. No crisis prevents this Court’s review.

IV. The Public Interest

10. The public interest favors a stay. Thousands of stockholders are watching this settlement, many of whom value their individual rights more than the settlement consideration. Even the Trial Court noted that the press and social media avidly follow this “high-profile case.” Second Op. at 37. This is not the typical settlement, litigated with little stockholder involvement. The numerous stakeholders affected by this case weigh in favor of a brief stay allowing this Court to respond while injunctive relief is still possible.

V. A Minimal Bond

11. No bond is necessary absent request by appellees. *Yahoo! Inc. v. Amalgamated Bank*, 2016 Del. LEXIS 287 ¶ 9 n.10 (Del. Apr. 14, 2016). Notably, Defendants never sought a bond from Plaintiffs (who quickly settled) despite a similar requirement in the Trial Court. *See* Ct. Ch. R. 62(d).

12. Security protects appellees from “losing the benefit of the judgment through the delay or ultimate nonperformance *by the appellant.*” *Zimmerman v. Crothall*, 2014 WL 257461, at *2 (Del. Ch. Jan. 23, 2014) (emphasis added, quotation omitted). Here, stockholders perform by complying with the litigation bar: the release, not the Conversion, is the judgment against absent stockholders.

Given Defendants' minimal assessment of the value of the claims, a minimal bond is appropriate.

13. Defendants' have not sought a bond to protect AMC, or they would have pursued an injunction bond months ago. Instead, they seek to "chill[] the socially-beneficial and wealth-enhancing efforts of responsible ... counsel to remedy and deter breaches of fiduciary duty...." *In re Del Monte Foods Co. S'holder Litig.*, 25 A.3d 813, 844 (Del. Ch. 2011). Objector is not independently wealthy: a significant bond will preclude interlocutory appeal, just as it would have precluded the initial status quo order had Defendants demanded one from Plaintiffs.

CONCLUSION

14. For the reasons set forth above, the Court should re-impose the status quo order pending the appeal. A proposed order is attached as Exhibit A.

Dated: August 16, 2023

Respectfully submitted,

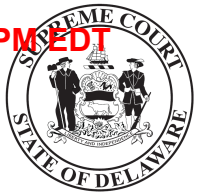
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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENT AND TYPE-VOLUME LIMITATION**

1. This motion complies with the typeface requirement of Supreme Court Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word.

2. This motion complies with the type-volume limitations of Supreme Court Rule 30(d) because it contains 1,192 words, which were counted by Microsoft Word.

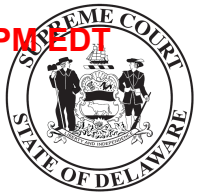
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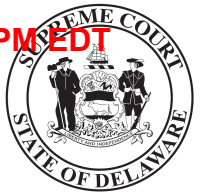
[PROPOSED] ORDER

UPON CONSIDERATION of *Appellant Rose Izzo's Motion for Status Quo Order Pending Appeal*, it is hereby ORDERED AND DECREED that:

1. The Motion is GRANTED; and
2. The parties in the proceeding below shall take no steps to implement the settlement approved by the Trial Court's order of August 11, 2023, pending resolution by this Court of this appeal; and
3. Defendants-Below shall not increase, decrease, split, reverse split, or convert any equity or other security of AMC Entertainment Holdings, Inc. ("AMC") as a result of any vote of shares at AMC's March 14, 2023 special meeting, or any other meeting of AMC's stockholders, pending resolution by this Court of this appeal.

Dated: _____, 2023

J.



CERTIFICATE OF SERVICE

I, Theodore A. Kittila (No. 3963), certify that copies of the foregoing APPELLANT ROSE IZZO'S MOTION FOR STATUS QUO ORDER PENDING APPEAL, CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION, [PROPOSED] ORDER, and this Certificate of Service were served on the following on August 16, 2023, by File & ServeXpress:

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