IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

TUTTLE'S RESPONSE TO PLAINTIFF'S OPPOSITION TO INTERVENE

Brian Tuttle *pro se* submits this response to Plaintiff's opposition to intervene and as grounds states the following:

PRELIMINARY STATEMENT

1. On April 13, This Court received a letter from Tuttle concerning this litigation. D.I. 87. The Tuttle letter requested "If the Court is inclined to graciously allow me to further advocate on behalf of my interests as an AMC common stockholder please allow me the opportunity to persist and consider this a *pro se* Motion to Intervene." Id. at 3. Following receipt of Tuttle's letter, This Court recognized the Tuttle letter as a Motion to Intervene and considered it unopposed. D.I. 90. For any avoidance of doubt, Tuttle hereby asserts his right to intervene under the discretion granted to This Court pursuant to Del.R.Civ.P.Super.Ct.23 and Del.R.Civ.P.Super.Ct.24.

ARGUMENT

2. Rules 23 and Rules 24 of Delaware Court of Chancery grant This Court liberal discretion to grant permissive intervention when a proposed applicant has both standing and a question of law in common. Id. Undoubtedly, Tuttle sits in a unique position here satisfying these requirements. There is no threat of delay or prejudice to the parties (or class participants) if Tuttle is allowed to intervene at this juncture. To the contraire, Plaintiffs and the class ultimately *benefit* from Tuttle's participation, as an equitable remedy, the questions of law and facts in common- and more importantly the rights of the class- may otherwise fall by the wayside.

I. THIS COURT HAS DISCRETION TO ALLOW INTERVENTION

3. Rules 23 and Rules 24 of Delaware Court of Chancery affords This Court liberal discretion to grant permissive intervention when an applicant's claim, or defense, and the main action have a question of law or fact in common. Id. Tuttle fits this criteria, as he is on record contacting the defendant- and *Alleghany*'s lead counsel- to air his concerns with AMC's rogue corporate governance as far back as October 6th 2022. D.I. 87. Tuttle is in a unique position as his work product very well may be the origins of common questions of law

Plaintiffs inadequately represent, and the Defendants have not opposed Tuttle's participation.

4. Plaintiff's concern granting intervention may "open up the floodgates" is overstated and ignores the very caution they appeal to. D.I. 101 at 4. This Court is fully capable of governing the docket in accordance with Rule 24, while evaluating this unique request, and any subsequent motion to intervene, *independently*. Additionally, Rule 23(d) gives The Court broad discretion to impose strict conditions on interveners. ("In the conduct of actions to which this rule applies, the Court may make appropriate orders.. imposing conditions on the representative parties or on intervenors".) Del.R.Civ.P.Super.Ct.23(d)(3). Likewise, Plaintiffs' apprehension pertaining to the timing of when intervention is permissive falls short.

II. PERMISSIVE INTERVENTION WOULD BENEFIT THE CLASS AND NOT CAUSE PREJUDICE OR DELAY

5. Tuttle re-alleges allegations made on behalf of class members- *including* Tuttle- in *Alleghany's* Verified Class Action Complaint Seeking Declaratory, Injunctive, and Equitable Relief. D.I. 1.

6. Amongst other things, *Alleghany*- representing AMC common stockholders *as a class*: "challenge(d) a course of complex disloyal corporate engineering" id. at 2, which included "a violation of the DGCL" at 8, "effectuated

for the very obvious *purpose* of eviscerating.. AMC common's specific power and right(s)". Id. at 8-9 (emphasis original). In Count II of their complaint, *Alleghany* continued: "***the Class are entitled to a declaratory judgment*** that the Preferred Stock is invalid and may not be voted…" Id. at 40 (emphasis added).

7. In addition to straightforward alleged breaches of DGCL 242, *Allegheny* stated facts and since-vacated arguments in common with Tuttle's intervention goals; namely, an agreement between the Defendants and Computershare which "allowed AMC to impose (a) Depository Voting Requirement on Computershare, pursuant to which Computershare is required to vote uninstructed shares according to the wishes of the company." Id. at 34, compare with D.I. 87 at 2 ("The Computershare agreements and Antara pledged votes deceptively amplified the percentage you are reporting by boosting Computershare non-votes.. ")

8. Now a settlement has been proposed, *Alleghany* is arguing declaratory judgment on whether or not AMC engaged in "complex disloyal corporate engineering" D.I. 1 at 8, would "defeat(s) the basic purpose of settlements". D.I. 101 at 6 (quoting Rome v. Archer, 197 A.2d 49. 53 (Del.Ch.1964). But Rome v. Archer was a derivative action settled only after years of litigation. Id. Rome v.Archer is inapposite when parties rush to the courthouse steps to lift a status quo order and commence a settlement without

adequate notice and opportunity, thereby *defeating the purpose of representation by class action*. D.I. 59.

9. As incorporated by reference in Tuttle's Motion to Intervene, Mr. Tuttle started a Petition to Opt Out of the proposed settlement. D.I. 87 at 2. As of the filing of this Response, over 1700 purported shareholders have signed the petition requesting the opportunity to opt out. The writing is on the wall, yet Plaintiff's insistence on marching forward, first proposed without proper notice and now in opposition to intervention, will only delay the inevitable, thereby causing further chaos for the class they claim to represent.

10. Tuttle is in a unique position to bridge the gap created when Plaintiffs motioned This Court to lift the status quo order to move forward on an unnoticed settlement, a significant portion of the class do not believe is "in the best interests of shareholders as a class". Id. Permissive intervention is timely and should be granted to Tuttle, even if only for the limited purposes of adjudicating Declaratory Relief Plaintiffs abandoned. Id. Tuttle does not foresee an extensive discovery process or the need to burden the parties, or Court, with oral arguments. Tuttle anticipates The Declaratory Relief Tuttle seeks can be boiled down to just a few questions of statutory law. After common questions of law are disposed, This Court could revaluate further intervention, with no foreseeable delay, or prejudice, to the plaintiff, or class.

III. PLAINTIFF'S REPRESENTATION OF TUTTLE IS INADEQUATE

11. Plaintiff's inadequate representation and mischaracterization of Tuttle's claims, *and work product,* create an exigency necessitating intervention. Plaintiffs argue Tuttle's claims, and common questions of law are adequately represented, D.I. 101, and after examination they chose not to assert Tuttle's alleged breach of 242 claim because it was "not cognizable". Id. at 7. In support of their legal analysis Plaintiffs exhibit AMC's 2013 Certificate of Incorporation, Id. Exhibit A, which they argue afforded Defendants an 'opt out' of DGCL 242. Id. at 7. But, as detailed below, Tuttle's arguments of alleged breaches of DGCL 242 are multi-pronged, and Plaintiffs overlooked amendments made to AMC's Certificate of Incorporation when the Delaware Secretary of State signed AMC's 2022 Certificate of Designations.

12. In their opposition, Plaintiffs mischaracterize Tuttle's common question of law as a *single* challenge to an alleged breach of DGCL 242, id at 6, but Tuttle's grievance is multi- pronged. D.I. 87. While Plaintiffs are correct in their assertion "Tuttle believes that only AMC common stockholders should have been permitted to vote on the proposal to increase the authorized number of shares of AMC common stock", D.I. 101 At 7; Tuttle has raised other common questions of law and facts as to whether or not the Computershare agreement to pledge

uninstructed votes as affirmative and/or the super voting powers given to preferred stock- without shareholder approval- also violated DGCL 242. D.I. 87.

13. AMC did not receive affirmative instructions from the majority of holders of corporation stock. DGCL 242 (b) provides that, regardless of whether or not holders of stock are voting independently, or collectively, the number of authorized shares of any class may be increased by the "*affirmative* vote of the holders of the *majority of the stock* of the corporation entitled to vote". DGCL 242 (b) (emphasis added). The Computer Share Depositary Agreement pledging non-instructed units for Defendants' was the lynch pin in Defendants' scheme to circumvent DGCL 242. Without the unlawful Computershare Agreement the vote fails.

14. The tabulations reported are the result of Defendants harvesting FOR votes from ballots that did not receive instructions to vote in the affirmative. The scheme, by way of the Depository Voting Requirements imposed on Computershare, is in breach of DGCL 242 (b) as only *affirmative* votes from corporation stockholders entitled to vote on share authorization are afforded the opportunity to participate on proposals to increase the number of authorized company stock. DGCL 242 (b)(2). Delaware General Corporation Law is statutorily defined so it must be strictly construed. Id.

15. Another common question of law encompasses whether or not, authorization under DGCL 242 was required at the inception of the preferred stock equity units being granted derivative voting power, and/or when Defendants entered into the Depository Agreement with Computershare. D.I. 87 at 2 ("I was working on a grievance which: "involves AMC entertainment holdings issuance of the dividend "APE"- it is now selling onto the market without shareholders' consent""; compare with D.I. 1 at 8 ("the issuance of the Preferred Stock was not properly authorized under DGCL Section 242(b) (quoting *Alleghany*)"

16. Circling back, Plaintiffs arguement in opposition to Tuttle being afforded the opportunity to intervene because Tuttle's claim "is not cognizable" and Plaintiffs "already examined" the claim, D.I. 101 at 9, is troubling. Indeed, DGCL 242 (b) does afford provided that there is an opt out clause, but only if there is an 'opt out' clause incorporated into the relevant governing designations at the time of the vote. Garfield v. Boxed (Dec 27, 2022).

17. Exhibited in Plaintiffs' Opposition is AMC's 2013 Certificate of Incorporation. D.I. 101 Exhibit A. Omitted is the more recent, *more relevant*, Certificate of Designations AMC filed with the Delaware Secretary of State, pursuant to Section 151, on July 28, 2022.

18. Under Section 151 (g) of DGCL once a certification has been filed with the Delaware secretary of state and becomes effective, the Certificate of Designations has the effect of amending the certificate of incorporation. DGCL 151 (g).

19. AMC's Certificate of Designations does not include a 242 'opt out'. Section IV. of AMC's 2022 Certificate of Designations, prescribes the preferred stock "Voting" designations as such:

> "Prior to the Conversion Date, Holders are entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are then convertible based on the Applicable Conversion Ratio as of the record date for determining stockholders entitled to vote (i) on all matters presented to the holders of Common Stock as one class , or (ii) whenever the approval or other action of Holders is required by applicable law or by the Certificate of Incorporation; *provided, however* that **Holders shall not be entitled to vote together with Common Stock with respect to any matter at a meeting of the stockholders of the Corporation, which under the applicable law** or the Certificate of Incorporation **requires a separate class vote**." (emphasis original) (bold added).

20. By AMC's own designations preferred equity units cannot vote as a class with AMC common when applicable law triggers a separate class vote, which DGCL 242 does. Garfield v. Boxed (Dec 27, 2022). DGCL explicitly states in relevant parts, when a resolution is proposed by a board seeking to alter, or change powers, or when a class is adversely affected shareholders must vote as a separate class with no provision for an 'opt out'. DGCL 242 (a)(3); DGCL 242 (b)(2). Defendants breached this important safeguard on at least three occasions which include: 1) adopting the board's resolution granting preferred stock super voting rights without setting a proposal for shareholders to authorize; 2) unilaterally entering into the Computershare Depository Agreement 3) allowing preferred stock equity units to vote in a commingled class with common stock.

21. Never the less, Defendants cannot have it both ways. Even if This Court were inclined to interpret AMC's Certificate of Designations as an 'opt out' that would also have meant AMC common should would have had an 'opt in' on the authorization of APE and/or the Computershare Agreement (signed after the board authorized APE under 151).

22. To be clear, Tuttle's claim is that there are *numerous* violations of DGCL 242, occurring at multiple steps of a process, and without disloyal corporate engineering Defendants did not accrue the needed votes to authorize the board's proposals. Plaintiffs mischaracterize and do not adequately represent Tuttle on

these important common questions of law. Acknowledging such, going forward with a shot gun conversion of preferred equity units into common stock creates a marketable disaster for the class and a windfall for the disloyal interests the board aligned themselves with.

IV. THE PROPOSED SETTLEMENT DOES NOT PROVIDE A FAIR REMEDY FOR THE CLASS AND IS UNLIKELY TO SURVIVE

23. Defendant, Adam Aron is no stranger to allegations of divided loyalty in his tenure at AMC. Linda Lao v. Adam Aron C.A. No. 2019-0303-JRS ("The CEO demonstrated clearly divided loyalties that members of the special committee described as "disappointing," "disturbing," and "beyond fathom." "Aron's bragging about saving Wanda $25 million at the minority's expense contributes to this problem.")

24. Similarly in this action, Mr. Aron, and his co-defendants, ran a similar hoodwink on common stockholders to deliver a windfall to the interested party at the heart of their preferred stock takeover scheme- Antara Capital. In exchange for agreeing to pledge votes, which inevitably allowed the Computershare Agreement to ensure a misleading quorum, Defendants arranged to sell Antara hundreds of millions of APE below the market price Antara destroyed (via shorting in the weeks preceding the private placement). D.I. 1. As of the record date for the shareholder meeting, Antara held approximately 18% of the collective voting

power for AMC's corporate stock and preferred equity units. Id. Upon information and belief, immediately following the record date Antara began dumping tens of millions of APE and AMC onto the market for substantial realized gains.

25. All the while, many investors in AMC were under the false pretense the preferred stock equity units were a unique dividend distributed only to them for the purpose of a "share count" that would give an accurate report of any illegal short selling. On August 4th, 2022 Defendant Adam Aron proclaimed "Candidly I've seen no evidence so-called fake or synthetic shares exist. But many of you disagree. This preferred equity dividend goes ONLY to company issued shares. So, it will have the impact of a "share count" or unique dividend many of you have sought." To date, no such share count has ever been published.

26. The marketable outcome from Defendants' divided loyalties has been catastrophic for holders of AMC common. Since the announcement of "APE" to this day, AMC common has lost approximately 79% of market value and the cumulative market cap of the corporation (AMC plus APE) plummeted from approximately $12,401,216,800 to $7,580,000,000.

27. Curiously, much of Plaintiff's opposition argue intervention is premature at this time because the proposed settlement is "yet-to-be filed" and Tuttle isn't privy to the settlement, then proceed to boast about the deal they

struck. D.I. 101. But Tuttle- and many of the 1700-plus purported shareholders whom signed Tuttle's Petition to opt out- diligently reviewed AMC's 8k disclosing the 7.5 to 1 distribution of common stock, and Patrick Ripley's affidavit filed in support. D.I. 110. Plaintiffs' math doesn't add up. Id. Moreover even if taken at face value, the economic value of the proposed equity distribution is merely a fraction of Antara's realized windfall, or the 17% drop in AMC common PPS in the minutes following the Adam Aron's "landslide" proclamation, D.I. 87; which both pale in comparison to the overall destruction of economics and opportunity.

28. Just as damning as unrealized monetary damages is the fallout from the destruction of class rights, powers, and prospects for recovery. Prior to Defendants' con AMC common shareholders held 100% voting power having, at least in theory, a check on Defendants divided loyalties. As far as disclosed, the destruction of rights and release of claims is not addressed in the proposed exchange for soon-to-be worthless stock (controlled firmly by the likes of Mr. Aron and the Defendants).

29. In conclusion, the rights and claims against the Defendants are more valuable to Tuttle, and shareholders similarly situated, than a distribution of stock controlled by the disloyal Defendants. Ultimately, the proposed settlement is doomed to fail now that the Plaintiffs tipped their hands rushing to lift the status order, in disregard for the treatment and opinion of a class now in disarray. Tuttle's

intervention is timely, unopposed by the Defendants and not likely to cause prejudice or harm.

WHEREFORE, This Court should grant Tuttle's pro se motion to intervene.

Respectfully submitted,

Brian Tuttle

k6v9581k3@gmail.com

CERTIFICATE OF SERVICE

I, Brian Tuttle, hereby certify that, on April 19th 2023, a copy of the foregoing *Tuttle's Response to Plaintiff's Opposition to Intervene* was filed and served electronically via File and Serve*Xpress* and a courtesy copy hand delivered to the USPS addressed and postmarked this day to:

Register in Chancery
Leonard L. Williams Justice Center
500 North King Street, Suite 11600
Wilmington, DE 19801