



IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE AMC ENTERTAINMENT
HOLDINGS, INC. STOCKHOLDER
LITIGATION

§
§ No. 290, 2023
§
§ Court Below—Court of Chancery
§ of the State of Delaware
§
§ C.A. No. 2023-0215
§

Submitted: August 18, 2023
Decided: August 21, 2023

Before **SEITZ**, Chief Justice; **VALIHURA**, **TRAYNOR**, **LEGROW**, and **GRIFFITHS**, Justices, constituting the Court *en Banc*.

ORDER

The Court has considered the appellant’s motion for a status quo order pending appeal, the appellees’ oppositions to the motion, and the appellant’s reply in support of the motion. For the reasons set forth below, the motion is denied.

(1) This interlocutory appeal arises from the settlement of a class action asserting direct claims on behalf of the common stockholders of AMC Entertainment Holdings, Inc. (“AMC” or “the Company”). In February 2023, Plaintiffs filed class action complaints, which were subsequently consolidated, against AMC and members of its board of directors (“Defendants”) for declaratory, injunctive, and equitable relief. Plaintiffs challenged AMC’s issuance of AMC Preferred Equity Units (“APE units”) and plans to obtain stockholder approval of proposed amendments to AMC’s certificate of incorporation at a special meeting. The

proposed amendments would increase the authorized number of common shares to permit the full conversion of APE units into common stock and effect a 1-to-10 reverse stock split of AMC equity.

(2) On February 27, 2023, the Court of Chancery entered a status quo order allowing AMC to hold the special meeting but preventing AMC from effectuating the results of the stockholder vote until the Court ruled on the preliminary injunction motion to be filed by Plaintiffs. On March 14, 2023, AMC held the special meeting and obtained stockholder approval of the proposed amendments.

(3) After document discovery and mediation, on April 27, 2023, the parties filed a stipulation of settlement in the Court of Chancery. Under the terms of the settlement, AMC agreed to distribute 6,922,565 shares of common stock to existing common stockholders, at a ratio of one share of common for every seven and a half shares of common stock held, after the reverse split but before the conversion. Following notice of the settlement, a Special Master's report on the numerous objections to the settlement, and briefing of exceptions to the Special Master's report, the Court of Chancery held a settlement hearing on June 29, 2023 and June 30, 2023.

(4) On July 21, 2023, the Court of Chancery declined to approve the settlement.¹ The court determined that Plaintiffs, “as common stockholders representing common stockholder class members, cannot release direct claims appurtenant to the preferred units.”² The court found further that “the release of claims arising out of preferred interests [was] not supported by consideration” because “[a]warding more shares to common stockholders necessarily comes at the expense of preferred units” and the settlement consideration therefore would harm preferred unitholders.³

(5) One day later, the parties informed the court that they had revised the release to address the court’s concerns. Because the revised settlement was otherwise identical to the settlement previously submitted for approval, the parties asked the court to approve the revised settlement without additional notice. On July 24, 2023, Objector/Appellant Rose Izzo (“the Objector”) filed a motion for clarification regarding the effect of the court’s July 21, 2023 decision on the scheduling order and the status quo order. In the alternative, the Objector sought to maintain the status quo order pending appeal of any final order approving the revised settlement.

¹ *In re AMC Entertainment Holdings, Inc. Stockholder Litig.*, 2023 WL 4677722 (Del. Ch. July 21, 2023).

² *Id.* at *2.

³ *Id.* at *3

(6) In response to the submissions of the parties and the Objector, the court ruled that the parties did not need to re-notice the proposed settlement and that the status quo order remained in effect. The court directed the parties to address whether there were any business needs requiring a decision by a certain date and also the effect on the proposed settlement of this Court’s recent decision in *Coster v. UIP Companies, Inc.*⁴ The court also asked for responses to the Objector’s request for a stay on the lifting of the status quo order pending appeal. The parties filed the requested submissions on July 25, 2023, and July 26, 2023. The Objector filed a reply in support of her motion to maintain the status quo order pending appeal on July 31, 2023.

(7) On August 11, 2023, the Court of Chancery issued a memorandum opinion and order (the “Settlement Approval Decision”) certifying a class and approving the revised settlement.⁵ In the Settlement Approval Decision, the court (i) certified the class as a non-opt-out class under Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (ii) concluded that the notice of the proposed settlement to the class was adequate; (iii) determined that the settlement terms were reasonable and that the releases were supported by sufficient consideration; and (iv) awarded Plaintiffs’ counsel fees of 12% of the settlement consideration. Because the court

⁴ 2023 WL 4239581 (Del. June 28, 2023).

⁵ *In re AMC Entertainment Holdings, Inc. Stockholder Litig.*, 2023 WL 5165606 (Del. Ch. Aug. 11, 2023).

did not finally approve the amount of Plaintiffs' attorney fees, the court noted that its decision and order was not final and any appeal would be interlocutory.⁶

(8) The court also resolved the Objector's motion to maintain the status quo order pending appeal. The court noted that the motion would normally not be ripe without a pending appeal, but decided that prompt resolution of the motion was appropriate because Defendants had expressed a need to consummate the reverse stock split and conversion as quickly as possible so that AMC could raise additional capital through the sale of common stock.

(9) Applying the four factors in *Kirpat, Inc. v. Delaware Alcoholic Beverage Control Commission*,⁷ the court declined to grant the stay. First, the court concluded that the Objector had not shown a sufficient likelihood of success on appeal. The court also found that the Objector would suffer irreparable harm if a stay were not granted because approval of the settlement would lift the existing status quo order, and leave the Company free to effect the conversion quickly and make it "difficult, if not impossible, to unwind" the challenged transactions if this Court reversed the settlement approval.⁸ But the court found that a stay pending appeal would cause even greater harm to the Company and its stockholders by delaying the Company's ability to raise additional capital, which the Company's financials

⁶ *Id.* at *41 n.368.

⁷ 741 A.2d 356 (Del. 1998).

⁸ *AMC*, 2023 WL 5165506, at *43.

reflected was a pressing need. The court observed that if the Company “filed for bankruptcy before an appellate decision were issued, both the common stockholders and APE unitholders would almost certainly suffer a complete loss of their investment.”⁹ Moreover, the court found, if the Company could not complete the conversion, it might have to sell additional APE units, which would reduce the value of the settlement consideration and further dilute the common stock.¹⁰ Finally, the court found that the Objector had not identified any public interest that would be served by granting a stay. The court noted that if a stay was granted, a “meaningful bond would be required in light of the Company’s present circumstances.”¹¹

(10) On Monday, August 14, AMC announced its intent to effectuate the transactions in ten days. On Tuesday, August 15, at about 4:20 p.m., the Objector filed her application for an interlocutory appeal in the Court of Chancery. The Objector did not seek expedited consideration of the application at that time.

(11) On Wednesday, August 16, at approximately 4:10 p.m., the Objector filed a notice of interlocutory appeal in this Court naming Plaintiffs and Defendants as appellees (“Appellees”). A half hour later, the Objector filed (i) a motion for a status quo order pending appeal the (“Status Quo Motion”), and (ii) a motion to shorten the time for Appellees to respond to the Status Quo Motion. The Objector

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at *44 n.395.

asked the Court to require Appellees to respond to the Status Quo Motion within twenty-four hours of the entry of an order granting the motion to shorten time. The Court granted in part the motion to shorten time, and directed Appellees to respond to the Status Quo Motion by Friday, August 18 at 5:00 p.m.

(12) On Friday, August 18, at about 10:30 a.m., the Objector filed a motion in the Court of Chancery for expedited scheduling of her application for certification of an interlocutory appeal. The court denied the motion and directed the parties to respond to the application by Friday, August 18 at 5:00 p.m. On August 18, 2023, Appellees filed their oppositions to the Status Quo Motion in this Court and Defendants filed their opposition to the Objector's application for certification in the Court of Chancery.

(13) The Objector argues that the *Kirpat* factors support restoration of the status quo order during the appeal, emphasizing that the conversion cannot be undone if this Court later rejects the settlement. The Objector states that she will withdraw the interlocutory appeal if the Status Quo Motion is denied. Appellees oppose the Status Quo Motion, arguing that if the status quo order remains in effect AMC cannot raise additional capital through equity sales to stave off bankruptcy and remain in compliance with loan covenants.

(14) Under Supreme Court Rule 32(a), a “stay or an injunction pending appeal may be granted or denied in the discretion of the trial court, whose decision

shall be reviewable by this Court.” Accordingly, this Court reviews the Court of Chancery’s denial of the Objector’s motion for a stay pending appeal to decide whether the court exceeded its discretion.¹² Under *Kirpat*, a court’s decision whether to grant an injunction pending appeal turns on its assessment of (i) the movant’s likelihood of success on appeal; (ii) whether the movant will suffer irreparable harm if the injunction is not granted; (iii) whether any other interested party will suffer substantial harm if the injunction is granted; and (iv) whether the public will be harmed if the injunction is not granted.¹³ These factors are not considered in isolation, but as part of a balancing of “all of the equities involved in the case together.”¹⁴

(15) The Court of Chancery carefully considered and applied each of the *Kirpat* factors before denying the Objector’s motion for a stay pending appeal. The Objector contends that the Court of Chancery “overestimated the potential harm from a brief stay,” arguing that AMC’s financial prospects have improved because it recently experienced its first profitable quarter since 2019.¹⁵ On appeal, however, we will not second-guess the Court of Chancery’s assessment of the Company’s financial position. Motions to stay are presented to the trial court in the first instance

¹² *Kirpat*, 741 A.2d at 357.

¹³ *Id.*

¹⁴ *Id.* at 358.

¹⁵ Status Quo Motion ¶ 9.

and then to this Court under a deferential standard of review in part because a trial court is better positioned to make such factual determinations.

(16) Also, the Objector has not proposed a schedule for orderly resolution of an interlocutory appeal. It is therefore unclear how long impediments to AMC's ability to raise capital would continue if the status quo were preserved pending appeal.¹⁶ And finally, the Objector has identified issues for appeal that can be decided post-closing without risking the serious harm that AMC might suffer if settlement approval is delayed. Under these circumstances, a status quo order pending appeal is not warranted.

NOW, THEREFORE, IT IS ORDERED that the Motion For a Status Quo Order Pending Appeal is DENIED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

¹⁶ We make two other points. First, this Court decides whether to grant or deny a stay pending appeal and the conditions of any stay. We do not enter "status quo orders." Second, in the Status Quo Motion, the Objector criticizes Appellees for their "torpor" as litigants, especially as juxtaposed with Defendants' announcement on August 14, 2023 that the conversion would take effect at 12:01 a.m. on August 24, 2023. Exhibit A to Application for Certification of Interlocutory Appeal. We note that, although the Settlement Approval Decision referred to Defendants' plans to effectuate the transactions as quickly as possible and the need to give ten-days-notice to the New York Stock Exchange, the Objector still waited four days to file an application for certification of an interlocutory appeal in the Court of Chancery and another day to file the notice of interlocutory appeal and the Status Quo Motion in this Court.