

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

	.	Chapter 11
IN RE:	.	
	.	Case No. 24-11161(BLS)
EPIC! CREATIONS, INC.,	.	
et al,	.	
	.	824 Market Street
	.	Wilmington, Delaware 19801
Debtors.	.	
.	Tuesday, October 8, 2024
CLAUDIA Z. SPRINGER,	.	
CHAPTER 11 TRUSTEE,	.	Adv. Proc. No. 24-50142(BLS)
	.	
vs.	.	
	.	
STRIPE, INC. WELLS FARGO	.	
BANK, NATIONAL	.	
ASSOCIATION, WHITEHAT	.	
EDUCATION TECHNOLOGY LLC,	.	
JOHN DOES 1-100	.	
.	

TRANSCRIPT OF VIDEO HEARING RE:
TRUSTEE'S MOTION FOR ENTRY OF TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

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Transcription Company: Reliable
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Proceedings recorded by electronic sound recording,
transcript produced by transcripti



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Trustee
NOVO ADVISORS

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1 (Proceedings commence at 4:01 p.m.)

2 THE COURT: Good afternoon. This is Judge Dorsey.
3 We're on the record in In Re Epic! Creations, Case Number 24-
4 11161.

5 I'll go ahead and turn it over to trustee's
6 counsel.

7 MR. JAFFE: Good afternoon, Your Honor. Henry
8 Jaffe, I am with Pashman Stein. I'm here today with the
9 trustee, Claudia Springer, who is on the line by Zoom. I'm
10 also here with my partner Mr. Barsalona. And I am here, as
11 well, with our co-counsel, lead counsel for the trustee,
12 Jenner & Block, and in particular Ms. Steege and Ms. Root,
13 along with Mr. Williams.

14 Your Honor, I'm going to turn the podium over to
15 them in just a moment. But I really want to thank Your Honor
16 for hearing us on such short notice. These are clearly
17 urgent issues that deal with preservation of estate assets.
18 I know this -- I know Your Honor has an affiliated case and
19 this is not Your Honor's case, so I cannot tell you enough
20 how much we appreciate your time in doing this and in hearing
21 us. And we did -- I know it would have been nice if we could
22 have gotten our papers to you a little sooner. We certainly
23 all rushed to try to get them as quickly as possible, so my
24 apologies for any delay.

25 But with that, I would like to turn it over to my

1 co-counsel.

2 THE COURT: Okay. Thank you, Mr. Jaffe.

3 MS. STEEGE: Good afternoon, Your Honor. Catherine
4 Steege on behalf of Ms. Springer.

5 And I'd like to echo Mr. Jaffe's comments, we
6 really very much appreciate Your Honor scheduling this
7 hearing on such short notice.

8 In terms of where we are and in terms of service of
9 these materials, which I would assume Your Honor would be
10 concerned with, we have been able to serve Stripe. We had
11 sent them an email this morning, asking them, when we
12 discovered this issue with regard to the accounts and the
13 illegal activity that was taking place, in terms of funds
14 going to parties who should not be receiving them, I did
15 reach out to Ms. Walsh, who we understand to have a position
16 of general counsel in their legal department.

17 I put "important," put the little exclamation point
18 on the email, explained what the circumstances were, asked
19 her to please confirm that they would freeze these accounts
20 and not send money out any further and, to the extent that
21 they could claw back the four hundred and some-odd thousand
22 dollars that they had transferred yesterday, asked her if she
23 would please take care to do that.

24 I got no response from her, so we proceeded to
25 prepare these papers this morning because of our concern that

1 we had been ignored from an earlier notice from Ms. Springer,
2 asking that these accounts be frozen and that they only
3 communicate with her with regard to them. And having not
4 heard anything in response to my email, we prepared these
5 papers and we filed them. I, again, served her at the same
6 email address. It has not bounced back or come back in any
7 way, shape, or form.

8 In terms of Whitehat, the party that received the
9 funds, we had three email addresses available to us for
10 those. Two of those have bounced back, one came back with an
11 out-of-office response.

12 And we are in the process of trying to get notice
13 to Wells Fargo. But Wells Fargo was really just to freeze
14 the funds that are in the Whitehat account, to the extent
15 that they are still there and have not moved forward.

16 So we would ask Your Honor to proceed with notice
17 to Stripe, although I don't believe anyone is here for them,
18 as best I can see from looking at the Zoom, and without
19 notice as to the other two defendants at this point in time.

20 The basis for the relief is as follows:

21 Stripe collects funds from the debtors' customers
22 and vendors, and as much as \$100,000 per day is collected and
23 had been, for the most part, going over to a Wells Fargo
24 account that Ms. Springer has since discovered and taken
25 control of.

1 However, we discovered yesterday that, sometime
2 around September 30th, right around the time that we served
3 notice on Stripe -- Ms. Springer did send a letter indicating
4 she was trustee and any accounts at Stripe were to be frozen
5 -- there was activity coming from various email accounts that
6 are shown in a chart in the complaint and in the motion for a
7 temporary restraining order and the memorandum, seeking to
8 make changes to the accounts, so that the funds would go to a
9 different account.

10 There were some transactions in that interim period
11 that failed, that they didn't send out the money.

12 Then, on October 2nd, about \$9,900 was sent out.

13 And then, yesterday, October 7th, the four hundred
14 and some-odd thousand dollars was sent out.

15 Those two transfers went to the Whitehat account at
16 Wells Fargo. And we've since discovered, and it's indicated
17 in the complaint, that, between the time of Ms. Springer's
18 appointment and the notice to Stripe, \$200,000 went over to
19 this Whitehat account.

20 None of those transfers were authorized by Ms.
21 Springer. These are clearly funds of Epic!, its collection
22 from customers for services that they provide. Under 542,
23 Stripe had an obligation to turn those funds over to the
24 trustee. She had, in fact, made a demand to receive those
25 funds.

1 And in light of the fact that we cannot get anyone
2 at Stripe to respond to our requests and given what's
3 happened with the account, we're seeking a temporary
4 restraining order ordering them not to transfer any funds out
5 of that account, make any changes to the account, allow
6 anyone else to have access to that account, and to turn over
7 what funds are in those accounts to Ms. Springer going
8 forward.

9 We are also asking, because we can see that the
10 money went yesterday to an account at Wells Fargo for this
11 Whitehat organization, that Wells Fargo freeze that account,
12 so, to the extent that those funds are there, we can collect
13 against them in due course, as the litigation proceeds,
14 either pursuant to Section 542 or as an inappropriate
15 transfer under 549.

16 We think that that's necessary and that the estate
17 will suffer irreparable harm if these things don't happen
18 because we understand that funds have been transferred to
19 India, out of the U.S., from all of these entities where Ms.
20 Springer is the trustee. So we have a trustee that, if the
21 accounts aren't frozen and, in particular, the Whitehat
22 account is not frozen, that those monies will transfer over
23 to India and we -- they will be beyond the ability of Ms.
24 Springer to collect.

25 And we don't have any reason to believe that

1 Whitehat, actually, is retaining any money here in the U.S.
2 We think it's all a front for the BYJU family and what
3 they're -- what they've been doing in the case in front of
4 Your Honor and what they have been doing in the three cases
5 in front of Judge Shannon.

6 So we think that there is irreparable harm here.
7 We think it's clear that these funds do belong to the estate
8 and should be frozen for the estate's benefit, and that
9 there's really no harm to the other side because they have no
10 right or entitlement to any of these funds.

11 And so we would ask for this temporary restraining
12 order with regard to Stripe, with notice; with regard to the
13 other two defendants -- we've attempted to serve Whitehat,
14 and apparently no one has seen it on their end; and then,
15 with Wells Fargo, which of course we would get notice to
16 immediately upon entry of any order.

17 So I don't know if Your Honor has any questions.

18 In support of this, we have attached Ms. Springer's
19 declaration attesting to all of the matters in the complaint
20 and the motion for a temporary restraining order.

21 THE COURT: Okay. No questions at this time.

22 Do we know if this is a hack attempt or is this
23 actually the BYJU folks? Do we know for sure?

24 MS. STEEGE: We're pretty confident, Your Honor,
25 that it's the BYJU folks because we can see from a screenshot

1 we were able to get that it's email addresses from
2 individuals in India. Whitehat has been a party that has
3 received money from the debtors in the past, and they seem to
4 have connections with the folks in India.

5 And we can see on some of these accounts -- because
6 we're going through a similar exercise with Apple, but
7 they're communicating with us. We can see that, shortly
8 after Ms. Springer's appointment, the account administrator
9 was changed on the Apple collection account to an entity that
10 is in India, but has a business address in the United Arab
11 Emirates and appears to have some connection, again, with the
12 BYJU brothers. So it seems like they have been scrambling
13 since the order for relief in an effort to try to glom onto
14 as much cash from these businesses as they could.

15 THE COURT: Okay. And no idea what this Whitehat
16 entity is? Do we know anything about them?

17 MS. STEEGE: Not really. I turn to Ms. Springer,
18 if she's learned something that I'm not aware of. But I
19 think -- we just know that they're a funnel for dollars, I
20 believe.

21 MS. SPRINGER: Yes, Your Honor. The Whitehat
22 entity, I believe, is a U.S. entity, the LLC entity. It has
23 a parent entity, also with the first name Whitehat, in India.
24 And we think -- but the Whitehat entity is not directly
25 obligated on the credit agreement to which the three debtors

1 and BYJU Alpha are obligated. So we think, though, there was
2 a request made that it be a guarantor. Evidently, under
3 Indian law, for whatever reason, that was not possible.

4 So we believe now they're using the Whitehat LLC
5 entity to be a recipient of funds that belong to one of the
6 three debtors, probably most likely Epic!, and then funneling
7 those funds up to their parent entity in India.

8 THE COURT: Okay. Thank you.

9 Is there anyone else who wants to speak on behalf
10 before I -- I guess -- well, let me ask first. Is there
11 anyone on the line for Stripe?

12 (No verbal response)

13 THE COURT: No answer. Okay.

14 Anyone else wish to hear -- be heard in support?

15 MR. SHANKAR: Your Honor, Ravi Shankar from
16 Kirkland & Ellis on behalf of GLAS Trust Company. If I may
17 be heard?

18 THE COURT: Go ahead.

19 MR. SHANKAR: Your Honor, first, to address Your
20 Honor's question, my understanding is that Whitehat, the
21 Indian entity, not the Delaware entity, provides coding
22 programs and classes for kids.

23 Whitehat is the entity on which the Delaware
24 Supreme Court found that its failure to accede to the credit
25 agreement gave rise to an event of default, which then led to

1 a series of events, including today's hearing.

2 THE COURT: That's where --

3 MR. SHANKAR: And in --

4 THE COURT: -- I heard that before. I knew I heard
5 that name somewhere before. Okay.

6 MR. SHANKAR: Your Honor, given the summary
7 judgment hearing tomorrow in the Alpha case, it's hard for me
8 not to recognize the parallels between what's happening now,
9 as laid out by Ms. Steege, and what we saw in the BYJU's
10 Alpha case, as well as our ongoing concerns about how to get
11 out ahead of the misconduct that we're continuing to see.

12 With Alpha, Your Honor may recall Mr. Pohl was put
13 into place and then, weeks later, an asset valued at over \$5
14 million is transferred place. For Epic!, we're seeing the
15 same story, Your Honor. It's a version of history,
16 unfortunately, repeating itself.

17 An order for relief was entered on September 16th
18 at Docket 147.

19 Ms. Springer was appointed on September 23rd at
20 Docket 151.

21 And then there are more transfers that are
22 precipitated by a change of control, by an organization in
23 India that's using geography to try to move money out of U.S.
24 entities.

25 And I'd just like to spend a moment, Your Honor,

1 just to address the macro and spin out why the conduct we see
2 gets more brazen with each passing month.

3 Before commencing the involuntary petitions, our
4 investigator identified over at least 17 transfers to
5 Whitehat, the same Whitehat entity that's receiving the funds
6 today, close to \$1 million.

7 We filed a motion under Section 303(f) of the
8 involuntary code restraining further intercompany orders, and
9 the Court granted that honor -- that order, Your Honor
10 granted that order at Docket 69 on June 28th, specifically
11 prohibiting the intercompany transfers we had saw because we
12 had learned our lesson from the Alpha case about the
13 fraudulent transfers.

14 During that case, Your Honor, we identified, based
15 on disclosures, the then putative debtors, now debtors, had
16 made, including 3 more transfers for close to \$135,000, again
17 to Whitehat.

18 We learned, after Ms. Springer's appointment, that
19 there were bank accounts that were supposed to have been
20 disclosed under Your Honor's order at Docket 69 that were
21 never disclosed. We learned about more fraudulent transfers
22 that were made in violation of the Court's order.

23 Again, Your Honor, it's hard for me not to see the
24 parallels with the Alpha case, the disregard for corporate
25 formalities, and the view by folks abroad that the money of

1 these Delaware entities is money they can take at their will.

2 So, Your Honor, on behalf of GLAS, on behalf of the
3 lenders, we've lived with quite a bit of misconduct for a
4 long time. The misconduct is not dissipating and the
5 misconduct would be appropriately enjoined. So I would echo
6 Ms. Steege's comments regarding the micro, but I wanted, Your
7 Honor, to virtually rise to provide that bit of macro
8 commentary.

9 THE COURT: Okay. Thank you, Mr. Shankar, I
10 appreciate it.

11 Ms. Steege, just so I'm clear, are you still
12 seeking an injunction against Bank of America or just Stripe
13 and Whitehat, or were you seeking one for Bank of America at
14 all?

15 MS. STEEGE: Pardon me, Your Honor. I was on -- I
16 turned myself on mute.

17 Not from Bank of America, from Wells Fargo Bank.

18 THE COURT: Or Wells Fargo, I'm sorry.

19 MS. STEEGE: We are --

20 THE COURT: Yeah.

21 MS. STEEGE: Yes, we're asking that they be ordered
22 to freeze the Whitehat account, zero eight -- which ends in
23 the four digits 0879.

24 THE COURT: But they haven't received notice of the
25 hearing.

1 MS. STEEGE: They have not. We've been working on
2 that since we got the papers completed. But at this point, I
3 cannot say that they have received notice.

4 THE COURT: I'm trying to remember what the rule is
5 about entering a TRO without notice. I think it has to be
6 only for a set amount of time, right?

7 MS. STEEGE: I believe, Your Honor, 14 days.

8 THE COURT: All right.

9 MS. STEEGE: And we do provide in the draft order
10 for a further hearing, which we assumed Your Honor would set
11 for further injunctive relief.

12 THE COURT: Yeah, this may -- that may be Judge
13 Shannon who hears it --

14 MS. STEEGE: Uh-huh.

15 THE COURT: -- the next time.

16 But -- so I will -- I'm going to grant the motion.
17 I think the trustee has shown a likelihood of success on the
18 merits. Clearly, someone is taking money from accounts that
19 belong to a debtor, for which she is the Chapter 11 Trustee.
20 There's irreparable harm if the money is moved and shipped
21 overseas and then out of the jurisdiction of this Court. And
22 I can't see any harm to the defendants, at this point. And
23 certainly the public interest is implicated in making sure
24 that parties are not illegally moving funds out of an account
25 and sending it somewhere else. So I will grant the order.

1 On the timing of the hearing, I'm not sure what to
2 do since I don't want to put something on Judge Shannon's
3 calendar without him knowing about it. But let's go ahead
4 and just schedule it for 14 days from today, which would be
5 the 22nd. And we'll say the 22nd at 1 p.m., just to have
6 something on -- in the order. And then Judge Shannon may
7 change that once he gets back from his travels and set a new
8 date and time, but for now, that will be what we go with.

9 Anything else we need to do?

10 MS. STEEGE: No. Thank you, Your Honor. And
11 again, we really appreciate your jumping in on this because
12 we know the papers got to you very close to the hearing time,
13 so we appreciate it.

14 THE COURT: It was enough -- I actually had enough
15 time to read them before I took the bench, so that was good.
16 And it's a TRO, so, you know, these things happen.

17 Let me see if there's anything else we need. Oh,
18 are you going to submit a revised form of order with the date
19 and time for the subsequent hearing and the --

20 MS. STEEGE: Yes.

21 THE COURT: -- date and time that I entered this
22 order, so that we have that? That has to be in there, as
23 well.

24 MS. STEEGE: Yes.

25 THE COURT: Okay.

1 MS. STEEGE: We will do that.

2 THE COURT: All right. All right. Well, thank you
3 all very much. We are adjourned. And I'm sure --

4 MS. STEEGE: Thank you, Your Honor.

5 THE COURT: -- Judge Shannon's chambers will be in
6 touch.

7 MS. STEEGE: Thank you.

8 THE COURT: Thank you.

9 MS. STEEGE: Thank you.

10 (Proceedings concluded at 4:19 p.m.)

11 *****

12 CERTIFICATION

13 I certify that the foregoing is a correct
14 transcript from the electronic sound recording of the
15 proceedings in the above-entitled matter to the best of my
16 knowledge and ability.

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October 9, 2024

22

Coleen Rand, AAERT Cert. No. 341

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Certified Court Transcriptionist

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