

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re	Chapter 11
EPIC! CREATIONS, INC., et al.,	Case No. 24-11161-BLS
Debtors. <sup>1</sup>	(Jointly Administered)
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CLAUDIA Z. SPRINGER,	
Plaintiff,	
v.	Adv. Proc. No. 24-50142-BLS
WELLS FARGO BANK, N.A., et al.,	<b>Hearing: October 22, 2024 at 1:00 p.m.</b>
Defendants.	<b>Re.: D.I. 2</b>

**OBJECTION AND ANSWERING BRIEF OF STRIPE, INC.  
TO CHAPTER 11 TRUSTEE'S MOTION FOR ENTRY OF  
TEMPORARY RESTRAINING ORDER (D.I. 2)**

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<sup>1</sup> The Debtors in these chapter 11 cases (collectively, the “**Debtors**”), along with the last four digits of each Debtor’s federal tax-identification number, are: Epic! Creations, Inc. (9113); Neuron Fuel, Inc. (8758); and Tangible Play, Inc. (9331).



**TABLE OF CONTENTS**

	<b>Page(s)</b>
I. INTRODUCTION .....	1
II. STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING .....	2
III. SUMMARY OF ARGUMENT .....	2
IV. STATEMENT OF FACTS .....	3
A. The trustee fails to give notice to Stripe of the bankruptcy or her demands with respect to accounts maintained by the Debtors at Stripe .....	3
B. The trustee obtained a temporary restraining order against Stripe without giving notice of the bankruptcy, her requests for account access and records, her complaint, or her motion for injunctive relief. ....	5
V. ARGUMENT .....	6
A. The Court should vacate the temporary restraining order now that Stripe has notice of the complaint .....	6
B. The trustee has not demonstrated that she is entitled to a preliminary injunction, especially where she cannot establish irreparable harm. ....	7
C. The temporary restraining order is not the proper mechanism for the trustee to make Stripe provide complete account access and records of the Debtors’ Stripe accounts. ....	9
VI. CONCLUSION .....	11

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Federal Cases</b>	
<i>ADAPT of Phila. v. Phila. Housing Auth.</i> , 417 F.3d 390 (3d Cir. 2005).....	10
<i>In re Broadstripe, LLC</i> , 402 B.R. 646 (Bankr. D. Del. 2009).....	8
<i>Instant Air Freight Co. v. C.F. Air Freight, Inc.</i> , 882 F.2d 797 (3d Cir. 1989).....	8
<i>Law v. Siegel</i> , 571 U.S. 415 (2014).....	9
<i>Metex Corp. v. ACS Indus., Inc.</i> , 748 F.2d 150 (3d Cir. 1984).....	10
<i>Norwest Bank Worthington v. Ahlers.</i> , 485 U.S. 197 (1988).....	9, 10
<i>Republic Underwriters Ins. Co. v. DBSI Republic, LLC (In re DBSI, Inc.)</i> , 409 B.R. 720 (Bankr. D. Del. 2009).....	8, 9
<i>Sampson v. Murray</i> , 415 U.S. 61 (1964).....	8
<i>Transcon. Gas Pipe Line Co., LLC v. Pa. Env’t Hearing Bd.</i> , 108 F.4th 144 (3d Cir. 2024) .....	8
<b>Federal Statutes</b>	
11 U.S.C. § 105(a) .....	9
11 U.S.C. § 542.....	2
<b>Rules</b>	
Federal Rule of Civil Procedure 37 .....	10
Federal Rule of Civil Procedure 65 .....	6, 7

## I. INTRODUCTION

The Court should deny the trustee's motion for a preliminary injunction and vacate the temporary restraining order against Stripe, Inc. ("**Stripe**"). The trustee did not give Stripe advance notice of this adversary proceeding or her motion because the trustee did not use the correct e-mail address when attempting to communicate with Stripe's general counsel. The trustee also did not serve Stripe's registered agent before plowing ahead.

Stripe did not find out about this case until 4:37 p.m. (Eastern) on October 8, 2024 when a news reporter contacted Stripe to ask about the trustee's complaint. (That was after the hearing on the trustee's motion for a temporary restraining order was scheduled to begin.) Having learned about the complaint and the bankruptcy through this unconventional channel, Stripe froze payouts from the Debtors' accounts at Stripe and engaged counsel. The premise of the trustee's motion is mistaken—Stripe did not flout the automatic stay or ignore notices from the trustee because the trustee never properly delivered them to Stripe.

There is no legal reason to extend the effective date of the Court's temporary restraining order or to replace it with a preliminary injunction. If there is a dispute between Stripe and the trustee about the disposition of funds potentially payable by Stripe (and it is not yet clear that there will be a dispute), then the trustee's remedy is an action seeking money damages. Injunctive relief is not available except in cases of irreparable harm, and this is not such a case because the trustee wants money. Nor is the trustee entitled to a preemptive order compelling the production of documents and information. The trustee has available to her the full panoply of discovery devices under the civil rules. The trustee cannot avoid those rules by a shortcut procured through injunctive relief.

## **II. STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING**

1. The trustee filed her complaint against Stripe and others on October 8, 2024. D.I. 1. She seeks (a) an injunction against Stripe and others that would, among other things, prevent the transfer of funds held by Stripe in which the trustee alleges an interest; (b) relief under section 542 of the Bankruptcy Code seeking the turnover of cash held by Stripe in which the trustee alleges an interest; and (c) an award of actual and punitive damages against Stripe for alleged violations of the automatic stay.

2. After a hearing that was scheduled to start at 4:00 p.m. (Eastern) on October 8, 2024, the Court entered a temporary restraining order setting a hearing on the trustee's motion for October 22, 2024, and requiring objections to be filed three business days before the hearing (October 17, 2024). The trustee agreed to extend Stripe's deadline to object to noon (Eastern) on October 18, 2024.

## **III. SUMMARY OF ARGUMENT**

A. The Court should vacate the temporary restraining order because the trustee did not serve Stripe with notice of the bankruptcy, the adversary proceeding, or her motion until after the complaint was filed and the Court heard the trustee's motion for a temporary restraining order, even though Stripe maintains an agent for service of process in Delaware and the trustee has since demonstrated a capacity to serve documents on that agent.

B. The Court should vacate the temporary restraining order and deny the trustee's motion for a preliminary injunction because the trustee is seeking money damages, which is not "irreparable harm."

C. The Court should vacate the temporary restraining order and deny the trustee's motion for a preliminary injunction to the extent that each would purport to require Stripe to produce documents and information that are available through discovery.

#### IV. STATEMENT OF FACTS

**A. The trustee fails to give timely notice to Stripe of the bankruptcy or her demands with respect to accounts maintained by the Debtors at Stripe.**

On June 4, 2024, creditors filed involuntary chapter 11 petitions against the Debtors. Case No. 24-11161, D.I. 4 ¶¶ 2–4.<sup>2</sup> Stripe is not aware of any attempt by the petitioning creditors to serve Stripe with notice of the petitions or the commencement of these bankruptcy cases. As of October 17, 2024, Stripe still has not appeared on the label matrix for local noticing maintained by the Court.

On September 16, 2024, this Court entered orders for relief and directed the appointment of a chapter 11 trustee. *Id.* ¶ 5. The United States Trustee for Region 3 appointed Claudia Z. Springer to serve as chapter 11 trustee of the Debtors. *See* Compl. Ex. A at 3, D.I. 1-1.

On September 30, 2024, the trustee addressed a letter to Trish Walsh, the general counsel of Stripe. Instead of delivering that letter by mail, courier, fax, or personal delivery, she e-mailed the letter to [trish@stripe.com](mailto:trish@stripe.com). Compl. Ex. A at 2, D.I. 1-1. Having received no response, Catherine L. Steege, counsel for the Trustee, sent an e-mail addressed to Ms. Walsh at [trish@stripe.com](mailto:trish@stripe.com) on October 8, 2024. Compl. Ex. B at 2, D.I. 1-2. These two documents attached to the complaint as exhibits A and B are referred to herein as the “**E-Mails.**”

Ms. Walsh is indeed Stripe’s general counsel. McBride Decl. ¶ 2. But her e-mail address is [trishw@stripe.com](mailto:trishw@stripe.com). *Id.* Ms. Walsh does not receive e-mails directed to [trish@stripe.com](mailto:trish@stripe.com). *Id.* ¶ 3. That e-mail address was used by an individual who is no longer

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<sup>2</sup> References to docket entries are to filings in the adversary proceeding except as otherwise noted.

employed by Stripe. *Id.* That e-mail address is not routinely monitored by Ms. Walsh or any other employees of Stripe. *Id.*

The Corporation Trust Company serves as Stripe’s registered agent for service of process within the State of Delaware. *Id.* ¶ 4. This information is available free of charge from a web site maintained by the State of Delaware. *Id.* Stripe’s registered agent has no record of having been served with the E-Mails, notice of the underlying bankruptcy cases, or other notices from the Trustee or her attorneys before October 14, 2024, when the trustee finally served the summons issued in this case on October 11, 2024. *Id.*

The trustee’s filings state that the trustee only attempted to deliver the E-Mails to [trish@stripe.com](mailto:trish@stripe.com); they describe no contemporaneous attempt to serve Stripe with the E-Mails or other notices by any recognized means of service. The first E-Mail states that it was sent “Via Electronic Mail” and does not include a physical service address. D.I. 1-1 at 2. The trustee’s complaint confirms that she “sent a letter via electronic mail” with no mention of any other form of service. D.I. 1 ¶ 16. Likewise, the second E-Mail was sent by counsel for the trustee to the same erroneous e-mail address. D.I. 1-2 at 2. Nothing in the second E-Mail indicates that its substance had been or would be delivered to Stripe by mail, courier, or personal delivery. D.I. 1-2 at 2.

Stripe understands that the trustee started sending communications to other e-mail addresses at Stripe beginning on October 9, 2024, and that the trustee mailed copies of filings to Stripe on October 8 and 9, 2024. *See* D.I. 12 at 6 (providing that the complaint, motion, and related pleadings were mailed to Stripe’s address by first-class mail on October 8, 2024); D.I. 13 at 6 (providing that the order granting the temporary restraining order was mailed to Stripe’s address by first-class mail on October 9, 2024). The trustee’s filings do

not explain why the trustee did not take such measures before filing her complaint or seeking a hearing on her motion for a temporary restraining order.

**B. The trustee obtained a temporary restraining order against Stripe without giving timely notice of the bankruptcy, her requests for records, her complaint, or her motion for injunctive relief.**

On October 8, 2024, the Trustee filed an adversary complaint against Stripe, Inc., Wells Fargo Bank, National Association, Whitehat Education Technology LLC, and John Does 1-100. D.I. 1. On that same day, the trustee requested entry of a temporary restraining order that would remain in effect until the Court could hold a hearing to consider the entry of a preliminary injunction in connection with the Motion. D.I. 2.

The Court held a hearing on the motion on October 8, 2024 starting at 4:00 p.m. (Eastern). The Court entered a temporary restraining order and set a further hearing for October 22, 2024. D.I. 9. Pending that hearing, the Court ordered that Stripe and all persons acting in concert with Stripe are immediately enjoined “(i) from accepting, authorizing, or implementing any changes to the Debtor’s Stripe’s accounts by any entity or person other than the Chapter 11 Trustee; and (ii) from transferring any funds Stripe is holding related to the Debtors including in the Stripe accounts to any entity or person other the Chapter 11 Trustee.” *Id.* ¶ 1. The order also required Stripe to provide the trustee “with complete account access and records of the Debtors’ Stripe accounts.” *Id.*

Employees of Stripe first became aware of Ms. Springer’s complaint against Stripe and the E-Mails sent to [trish@stripe.com](mailto:trish@stripe.com) at 4:37 pm. (Eastern) on October 8, 2024, when a news reporter contacted Stripe to ask about them. McBride Decl. ¶ 5, Ex. A at 1. When Stripe learned about the trustee’s complaint, Stripe acted promptly to engage counsel and freeze payouts from accounts identified as belonging to one or more of the Debtors in this case. *Id.* ¶ 6. In addition to payouts identified in the complaint, one disbursement of



\$156,320.30 was released from an account associated with the Debtors on October 8, 2024. *Id.* No further payouts from the accounts known to Stripe as belonging to one or more of the Debtors have been made. *Id.*

## V. ARGUMENT

### A. The Court should vacate the temporary restraining order now that Stripe has notice of the complaint.

The trustee violated Rule 65 of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Rule 7065 of the Federal Rules of Bankruptcy Procedure, when she sought a temporary restraining order from this Court without providing notice to Stripe or supplying a certification from her attorney describing efforts to provide notice. “The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if . . . the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 7065(b)(1)(B). The trustee neither provided notice nor a certification of efforts to give notice nor reasons why notice was dispensable.

The trustee did not give Stripe prior notice because the trustee sent two e-mails to the wrong e-mail address. The trustee made no effort to deliver the substance of those communications by any other method, even though Stripe maintains an agent for service of process in Delaware. The trustee did not send anything by mail until October 8, 2024, which could not have provided Stripe with notice until after the Court already heard the trustee’s motion for a temporary restraining order.

Even if the e-mails had been received (and they were not), they would not have constituted “notice” pursuant to Rule 65. The first e-mail made no reference to injunctive relief. The second e-mail, which the trustee sent to the same incorrect address as the first,

generally alluded to the possibility of injunctive relief but did not give notice of the motion, the date and time of the hearing, or any other information that might have permitted Stripe to appear and defend itself. *See* Compl. Ex. B, 1-1 at 2 (“Please be advised that Ms. Springer intends to seek temporary, preliminary, and permanent injunctive relief against Stripe to prevent any further funds from being transferred to any account other than her trustee account.”). The inadequacy of the trustee’s efforts is evident from the fact that Stripe learned of the trustee’s complaint from a news reporter after the Court already commenced a hearing on the trustee’s motion. *See* McBride Decl. ¶ 5.

Having failed to give notice, the trustee was required by Rule 65 to provide the Court with a certification from counsel of efforts to give notice. No such certification was provided. The trustee’s counsel did not file her own declaration and the memorandum in support of the trustee’s motion does not include the word “certify” or variants thereof. Nor did the trustee explain why notice should not have been required under the circumstances.

Now that Stripe has notice of the complaint and is cooperating with the trustee, the temporary restraining order is no longer necessary. Upon notice of the complaint, Stripe froze payouts from the Debtors’ accounts. *Id.* ¶ 6. This litigation could have been avoided if Stripe had received prior notice of the bankruptcy proceedings from the trustee and not a news reporter. *See id.* ¶ 5.

**B. The trustee has not demonstrated that she is entitled to a preliminary injunction because she cannot establish irreparable harm.**

The grant of injunctive relief is an “extraordinary remedy, which should be granted only in limited circumstances.” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989) (internal quotations and citation omitted). The party seeking a temporary restraining order or preliminary injunction must demonstrate: (i) a reasonable

likelihood of success on the merits; (ii) a likelihood that it will suffer irreparable harm if relief is denied; (iii) that the nonmoving party will not suffer even greater harm if the injunction is granted; and (iv) that the public interest favors such relief. *In re Broadstripe, LLC*, 402 B.R. 646, 655 (Bankr. D. Del. 2009) (citations omitted).

The failure of the movant to demonstrate the first two elements—a reasonable probability of ultimate success and some harm that cannot be remedied in either law or equity following resolution on the merits—“is fatal to the issuance of a preliminary injunction.” *Transcon. Gas Pipe Line Co., LLC v. Pa. Env’t Hearing Bd.*, 108 F.4th 144, 150 (3d Cir. 2024).

Economic loss alone does not suffice to show irreparable harm. *See Sampson v. Murray*, 415 U.S. 61, 90 (1964) (“Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.”). For example, a Delaware bankruptcy court denied a motion for a preliminary injunction where the movant, on the theory that the court’s sale approval order terminated a lease, requested that the court prevent the landlord from collecting monthly rent under the lease in excess of the fair market rent from it. *Republic Underwriters Ins. Co. v. DBSI Republic, LLC (In re DBSI, Inc.)*, 409 B.R. 720, 726 (Bankr. D. Del. 2009). The movant failed to demonstrate that the potential monetary harm of paying the monthly rent set forth in the lease could not be redressed by a legal or equitable remedy following a trial. *Id.* at 736 (noting that the movant may obtain a money judgment in the unlikely event it prevails on the merits).

Much like the movant in *In re DBSI, Inc.*, the trustee cannot demonstrate how she would be irreparably harmed if the Court does not enter an injunction. The trustee is seeking money from Stripe. The alleged harm is economic loss for which adequate compensatory relief in the form of a money judgment will be available. Because the economic loss alone does not show that the element of irreparable harm is met, the trustee has not meet her burden for demonstrating that a preliminary injunction against Stripe is necessary.

**C. The temporary restraining order is not the proper mechanism for the trustee to make Stripe provide complete account access and records of the Debtors' Stripe accounts.**

The trustee should not be allowed to use a request for injunctive relief as a means of sidestepping the ordinary rules of discovery. She cited no cases that support her request for injunctive relief granting her “complete account access and records of the Debtors’ Stripe accounts.” Instead, she cited to cases from outside the Third Circuit invoking section 105(a) of the Bankruptcy Code and its “extensive equitable powers . . . .” D.I. 4 ¶ 18. But “whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.” *Law v. Siegel*, 571 U.S. 415, 421 (2014) (citing *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)). The Bankruptcy Code and rules provide adequate means for the trustee to obtain information from Stripe in this adversary proceeding.

A preliminary injunction is not the appropriate vehicle to compel the production of documents and information. An injunction, for purposes of statutes governing appellate jurisdiction, is an order to “accord or protect some or all of the substantive relief sought by the complaint.” *ADAPT of Phila. v. Phila. Housing Auth.*, 417 F.3d 390, 395 (3d Cir. 2005). “An order compelling discovery does not grant part of the substantive relief sought and is

therefore not an injunction for the purposes of section 1292(a)(1).” *Id.* (citation omitted). The proper mechanism for compelling the production of documents and information is “a motion for an order compelling discovery . . . pursuant to Rule 37.” *See Metex Corp. v. ACS Indus., Inc.*, 748 F.2d 150, 156 n.11 (3d Cir. 1984).

The trustee has not filed a motion to compel the production of documents and information under Rule 37. That is presumably because she cannot as the trustee has not yet served discovery requests on Stripe. If the trustee does so and is dissatisfied with Stripe’s responses, she will be free to return to the Court to seek an order compelling production. Effectively, the trustee’s motion operates as a motion to compel under Rule 37 that circumvents the obligations incumbent on her, such as the obligation to certify that she has sought the materials without resorting to the Court.

There are good reasons why the trustee should be required to follow Rule 37. Among other things, that will allow the parties to work out exactly what the trustee means when she asks for “complete account access and records of the Debtors’ Stripe accounts.” Stripe is already searching for documents and information to provide to the trustee, but it is possible that the parties will not agree on the scope of what must be provided and what might be properly withheld based on privileges and other protections from disclosure. If it becomes necessary for the Court to intervene, it will be able to issue orders benefitting

from a full development of the record and a more precise articulation of any areas of disagreement.

## VI. CONCLUSION

For the foregoing reasons, the trustee's motion should be denied.

DATED this 18th day of October, 2024.

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