

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Case No. 01-706(MFW)
) through 01-709(MFW)
) (Jointly Administered)
)
ETOYS, INC., ET AL.,) Chapter 11
)
) Courtroom 4
) 824 Market Street
Debtors.) Wilmington, Delaware
)
) March 18, 2009
) 3:00 p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JUDGE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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1 WILMINGTON, DELAWARE, WEDNESDAY, MARCH 18, 2009, 3:36 P.M.

2 THE COURT: All right. And the final status
3 conference I have is eToys. All right. And I think we have
4 somebody --

5 MR. HAAS: Hello.

6 THE COURT: -- by phone.

7 MR. HAAS: Your Honor.

8 THE COURT: Yes.

9 MR. WERKHEISER: Good afternoon, Your Honor. For
10 the record, Gregory Werkheiser, Morris Nichols Arsht &
11 Tunnel, appearing for the Plan Administrator. I'm joined at
12 Counsel's table by Mr. Rosner who is here on behalf of the
13 Post Effective Date Committee. Those are the two estate
14 representatives under the terms of the Plan in this case.
15 Your Honor, by way of brief overview of what's going on in
16 the case, generally, there were only a handful of matters
17 remaining, one of which was an appeal from an adversary
18 proceeding that had been previously pending before this
19 Court that EBC-1 had brought against AOL. It had been
20 resolved adversely through EBC-1. That was appealed to the
21 District Court. In January '09, Judge Farnan affirmed.
22 There is an appeal now in the Third Circuit which is
23 proceeding. Briefing has not commenced. It will be some
24 time before that's resolved.

25 Your Honor, the only other piece of activity in

1 the case at this point, and it's not technically in the
2 case, but it's pending in the State Courts of New York, is
3 the IPO litigation that the Post Effective Date Committee
4 has, and if I could cede the podium to Mr. Rosner to provide
5 an update on that.

6 THE COURT: All right. Mr. Rosner?

7 MR. ROSNER: Thank you, Your Honor. For the
8 record, Fred Rosner, Messana Rosner & Stern, for the Post
9 Effective Date Committee. I do have some positive news from
10 what's been referred to as the IPO litigation which is the
11 litigation brought by the Post Effective Date against
12 defendant, Goldman Sachs & Company, and that's pending in
13 the Supreme Court of New York.

14 In early February, the Court rendered a decision
15 that was in favor of the Post Effective Date Committee.
16 What it did was granted a motion made by the Post Effective
17 Date Committee to amend its Complaint, not in the sense of
18 adding causes of actions or counts, but to add additional
19 facts to a proposed Amended Complaint that would support the
20 two remaining counts under the Amended Complaint which is
21 fraud and breach of fiduciary duty. So the Court did grant
22 that motion. It denied a competing motion brought by
23 defendant, Goldman Sachs to the dismiss the Amended
24 Complaint and my understanding, in speaking with counsel
25 who's prosecuting that on behalf of the estate, is that

1 there will be a status conference in that case in early
2 April, that they will proceed to complete discovery, and
3 without any commitment, there's some sense that perhaps they
4 could get a trial date this year, depending on what the
5 trial calendar is like with the Supreme Court of the State
6 of New York. And so that's the status of that case.

7 THE COURT: All right. Well, should we set this
8 for a further status hearing then towards the end of this
9 year, maybe in December?

10 MR. WERKHEISER: Your Honor, I think that would
11 be fine with us. Your Honor, that would certainly be fine.

12 One thing we were considering in the interim,
13 given where the case is and what little there is left to do
14 in the case, would be the possibility of looking at closing
15 the case subject to a retention of jurisdiction in the event
16 that the AOL litigation came back down after the appeals or
17 there were some further proceedings related to the IPO
18 litigation, ultimately in this Court. So I think it would
19 probably make sense to just re-set this for the end of the
20 year and then in the interim, if we decide to move forward
21 with that, we contact Chambers about a hearing date and --

22 THE COURT: That's fine.

23 MR. WERKHEISER: -- try to put that motion on.

24 THE COURT: Any objection by the U.S. Trustee to
25 that?

1 MR. HAAS: Your Honor. Steve Haas. I'd object.

2 MR. KENNEY: No objection, Your Honor. I think
3 that the case has progressed. I'm not sure if there are any
4 claims at all left to deal with at this time so that it may
5 be appropriate to file a decree at [indiscernible] leave it
6 open for the outstanding Bankruptcy Court litigation.

7 MR. HAAS: Hello. Hello.

8 THE COURT: Would the -- Mr. Haas, would you wait
9 while the U.S. Trustee --

10 MR. HAAS: I'm sorry. I thought I was still on
11 mute, Your Honor.

12 THE COURT: Okay.

13 MR. WERKHEISER: Your Honor, in response to Mr.
14 -- the U.S. Trustee's comments, all the claims are resolved.
15 There have been substantial distributions in the case
16 already. There's a few million dollars worth of cash in the
17 estate remaining, some of which is being used to fund the
18 ongoing activities in the litigation, some of which would
19 ultimately be available to distribute and that really
20 accounts for substantially all of the activity at this
21 point.

22 THE COURT: All right. Well, I'll leave it to
23 you to decide whether you want to file a motion to close the
24 case in the interim and deal with the U.S. Trustee regarding
25 what reports would be required.

1 Mr. Haas, you had a comment?

2 MR. HAAS: Yes, Your Honor. I object to closing
3 the case. They -- the brief that we spoke about at the last
4 status conference I placed in, nobody answered, nobody
5 emailed me concerning the hearing, and Mr. Werkheiser
6 emailed me that they don't have to; that I don't have
7 standing on the Court, and therefore, I can't bring the
8 matter of fraud upon the Court to the Court's attention.
9 And if they read the brief, they'd know that the status of
10 standing is a falsehood to the Court. It's within the
11 contract that Mr. Werkheiser and TBF drafted, that even the
12 janitor of CLI has the right because they're being directly
13 paid by the debtor to bring their grievance about not being
14 paid for their individual things.

15 THE COURT: Well, Mr. --

16 MR. HAAS: So outside of Collateral Logistics, I
17 still have a standing to be heard. It's been a bogus road
18 upon the Court this whole time that they've withheld from me
19 after my own attorney, Henry Hyman, emailed me a statement
20 from Susan Balaschak that I better back off or I won't be
21 paid. Since that time, as I made the Court aware last time,
22 Wells Fargo transacted \$100 million prior to eToys filing
23 within the 90-day period and both Barry Gold and TBF have
24 already testified on the record that they've got an ongoing
25 relationship with Wells Fargo.

1 THE COURT: Mr. Haas.

2 MR. HAAS: Yes ma'am?

3 THE COURT: I told you to file something.

4 Apparently, you say you filed something, although apparently
5 you didn't follow all of the local rules that would require
6 that it be scheduled. So I don't know what you filed and I
7 don't know if you filed it through counsel as you've been
8 told throughout that you as an individual do not have a
9 claim, and therefore, have no standing.

10 MR. HAAS: Your Honor, the contract says that
11 everybody's paid directly by eToys. All the people that are
12 allowed to be paid directly by eToys have the direct
13 standing to address that grievance if they're not paid.

14 THE COURT: Mr. Haas. Mr. Haas, this issue has
15 been decided by me and others, against you. I don't know
16 what pleading you say you filed, but apparently, it's not
17 been listed for a hearing because the appropriate procedure
18 was not filed -- followed.

19 MR. HAAS: Your Honor, is it a standard if a
20 procedure's violated for the Clerk to notice that a
21 procedure's has been violated?

22 THE COURT: The procedure in our Court is in our
23 local rules, and obviously if you had a counsel, he would
24 know how to read those and follow that procedure. But it's
25 incumbent upon the movant --

1 MR. HAAS: So you're going to permit fraud on the
2 Court to continue under a technicality to get the person out
3 of the way when the people that admitted to you that they
4 supplicated false affidavits? MNAT has picked Traub to
5 handle New York and half the cases under seal.

6 THE COURT: Mr. Haas, I'm not going to hear you.

7 MR. HAAS: Okay.

8 THE COURT: Because you are not a creditor in
9 this case. Your corporation needs to have counsel if they
10 want me to hear their arguments.

11 MR. HAAS: Have a great day, Your Honor.

12 THE COURT: All right.

13 MR. WERKHEISER: Your Honor? There was a
14 document filed. We advised Mr. Haas prior to today that it
15 had not been properly noticed, that he had not obtained a
16 hearing date --

17 THE COURT: Right.

18 MR. WERKHEISER: -- for it and we did feel
19 obligated to respond, and indicated that we also understood
20 the District Court, this Court, and the Third Circuit to
21 have ruled that he didn't have standing or the ability to
22 proceed pro se on behalf of CLI.

23 THE COURT: All right.

24 MR. WERKHEISER: And that CLI also had been
25 adjudicated not to have any claims.

1 MR. HAAS: That's not true.

2 THE COURT: I'm not going to --

3 MR. HAAS: There's never been a hearing on CLI's
4 claim.

5 THE COURT: Mr. Haas, I'm not dealing with it.

6 MR. HAAS: Okay.

7 THE COURT: I've said what I've said. We don't
8 have anything else on here? You've answered my question on
9 the status.

10 MR. WERKHEISER: No, Your Honor. That is
11 everything.

12 THE COURT: All right. That's all?

13 MR. WERKHEISER: Yes, Your Honor. Did you want
14 to set a date for us to return in December?

15 THE COURT: Yes. Let me give you a date.
16 December 16th. It will be at 2:00.

17 MR. WERKHEISER: Thank you, Your Honor. Nothing.

18 THE COURT: All right. Then I have nothing else
19 but to go back to Tweeter.

20

1 (Whereupon, at 3:45 p.m., the hearing was adjourned.)

2

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CERTIFICATION

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I certify that the foregoing is a correct

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transcript from the electronic sound recording of the

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proceedings in the above-entitled matter.

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Tammy L. Kelly, Transcriber

8 November 2011

Date

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