

Art Van's Ch. 11 Opens With Fight Over Customer Deposits

By **Vince Sullivan**

Law360, Wilmington, Del. (March 10, 2020, 6:56 PM EDT) -- A dispute with the Office of the United States Trustee opened the Chapter 11 case of home furnishing retailer Art Van Furniture on Tuesday in Delaware when the bankruptcy watchdog questioned how the debtor would handle \$35 million in customer deposits going forward.

During a first-day hearing in Wilmington, U.S. trustee's representative Linda Richenderfer questioned Art Van's proposed customer practices motion, through which the debtor is seeking permission to maintain or modify its existing gift card and loyalty programs as it begins liquidating the bulk of its 169 retail stores.

The sticking point involved how customer deposits for undelivered furniture would be handled, and Richenderfer specifically questioned how customers would be made aware that their deposits would be converted into store credit if the items they ordered could not be delivered. Noticing procedures for an April 15 deadline for the use of outstanding gift cards also drew the trustee's attention.

"I would think the debtors would have contact information for the customers who put down deposits, because otherwise you wouldn't be able to tell the customer when their goods have been received," Richenderfer argued.

According to debtor attorney Gregory W. Werkheiser, Art Van possesses deposits from 70,000 customers totaling \$35 million, and the company said those deposits would be converted to store credit if Art Van was unable to deliver on the ordered furniture after **filing for Chapter 11**. Later in the case, after a planned sale of 44 stores and the liquidation of the remaining ones, the debtor said it may be able to provide refunds of the deposits to some customers.

U.S. Bankruptcy Judge Christopher S. Sontchi also took issue with the debtor's proposed order, also focusing on the noticing efforts. Werkheiser explained that each closing store will display a prominent notice detailing the deposit changes and gift card cutoff date, and Art Van's website homepage has been changed to include this information.

After pulling up the website at the bench, Judge Sontchi said the digital notice needed to be clearer and that the changes to the existing programs needed to be fleshed out in the court filings.

"You've got to give people notice," Judge Sontchi said. "Part of that is I want the order to specify exactly what's happening, and I want a clear and conspicuous notice to go up on the website and in the stores. I would prefer something to go to them in mail or email. If you can do that, you're required to do it."

After a recess later in the hearing, Werkheiser said the order had been updated to reflect those requested changes and that whenever email contact information for customers was available, it would be used to send notice of the changes. All others would receive notice by traditional mail, he said.

Judge Sontchi agreed to sign the order, and he approved other typical first-day motions, including requests from the debtor to pay the wages and benefits of its 4,000 employees and to jointly

administer the cases of the debtor and its affiliates that also sought Chapter 11 protection.

Art Van filed its petition late Sunday, citing extreme market conditions for its retreat into bankruptcy while carrying more than \$200 million in debt.

Based in Michigan, the company said in initial court declarations that its sales have been declining significantly since 2016 as competition increased, expenses jumped and expansion attempts fizzled.

Founded in 1959, Art Van currently operates 169 furniture and mattress stores in Michigan, Indiana, Ohio, Illinois, Pennsylvania, Maryland, Missouri and Virginia under the names Art Van, Pure Sleep, Scott Shuptrine Interiors, Levin Furniture, Levin Mattress and Wolf Furniture.

The company was acquired by Thomas H. Lee Partners LP in March 2017, funded by a sale-leaseback transaction with Van Art-owned stores. The Pennsylvania-based Levin and Wolf businesses were acquired in November 2017, the declaration said.

Those Pennsylvania stores are subject to a going-concern sale bid from their former owners, the Levin family, who will seek to reacquire them through the bankruptcy process. To fund continuing inventory and operational costs at those stores, Art Van will seek interim approval of a small debtor-in-possession financing package that will enable it to draw \$3.5 million.

The DIP motion, as well a motion seeking approval of store-closing procedures for the liquidating stores, will be heard by Judge Sontchi on Thursday. The motions were not able to be considered Tuesday because they were filed too late to qualify for the first-day hearing.

Art Van is represented by Gregory W. Werkheiser, Michael J. Barrie, Jennifer Hoover, Kevin Capuzzi and John C. Gentile of Benesch Friedlander Coplan & Aronoff LLP.

The case is In re: Art Van Furniture LLC et al., case number 20-10553, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Rick Archer. Editing by Haylee Pearl.