

U.S. Trustee Takes Aim At Art Van's Connection To Liquidator

By **Vince Sullivan**

Law360 (March 18, 2020, 8:40 PM EDT) -- The Office of the U.S. Trustee put to paper its concerns that Art Van Furniture's liquidation consulting agreement is sparse on detail about the liquidator's relationship with secured lenders, one week after a Delaware bankruptcy judge delayed a hearing on the issue prompted by those same misgivings.

In the objection, the bankruptcy watchdog laid out opposition to the approval of the consulting agreement with a joint venture of liquidators Hilco Merchant Resources and Gordon Bros. Retail Partners, saying it doesn't meet the requirements for the liquidator to be retained under the bankruptcy code.

The U.S. Trustee's Office argued that it pushed for greater transparency in the hiring of liquidators in late 2018 and that the Delaware bankruptcy court determined that those professionals did not need to meet the stringent requirements under Section 327(a) of the code, but that substantial information about the compensation to be earned by liquidators and the services to be provided needed to be disclosed. After that disclosure, a debtor would have to show the engagement was a sound exercise of its reasonable business judgment.

Here, the U.S. Trustee's Office argued that there has not been enough disclosure as the consulting agreement does not share the compensation being paid to the liquidator.

"The little that has been disclosed reveals debtors have selected a consultant whose interests are aligned with the prepetition secured term lender, an affiliate of the consultant, and not with the estate and the creditors as a whole," the objection said. "Respectfully, this arrangement is not compliant with the bankruptcy code and is not sufficient to meet transparency concerns."

U.S. Trustee's Office attorney Linda Richenderfer pressed these same issues at a hearing last week before U.S. Bankruptcy Judge Christopher S. Sontchi, who felt they were serious enough to delay his consideration of the consulting agreement motion from Art Van. He set a March 20 hearing to hear evidence about the appropriateness of the arrangement.

Associates of Hilco and Gordon Bros. acquired Art Van's existing \$175 million term loan debt from KKR Advisors shortly before the company filed for bankruptcy protection, creating concerns for the court about the relationship between the liquidator and the term lenders.

Judge Sontchi said that an official committee of unsecured creditors should have an opportunity to review the agreement and voice any opposition before the court heard the matter. The U.S. Trustee's Office appointed a seven-member committee Wednesday afternoon.

Under the proposed consulting agreement, the liquidator would not be paid any fees up front for running store closing sales at more than 120 Art Van retail locations, but would instead be paid out of the recovery that goes to the term lenders following the end of those sales and a going-concern transaction for 44-store subset of locations.

Representatives for Art Van could not immediately be reached late Wednesday for comment.

Art Van filed its Chapter 11 petition March 8, 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 Art Van-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.

Art Van is represented by Gregory W. Werkheiser, Michael J. Barrie, Jennifer Hoover, Kevin Capuzzi and John C. Gentile of Benesch Friedlander Coplan & Aronoff and Marc J. Phillips and Maura I. Russell of Montgomery McCracken Walker & Rhoads LLP.

The Office of the U.S. Trustee is represented by Linda Richenderfer.

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.

--Editing by Abbie Sarfo.