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Sports Authority Vendors Rip Emergency Consignment Appeal

By **Jeff Montgomery**

Law360, Wilmington (May 11, 2016, 6:14 PM ET) -- Sports Authority's consignment vendors have accused the bankrupt company's term loan lenders of launching a hollow emergency motion in U.S. district court in a bid to reverse a Delaware bankruptcy judge's refusal to escrow consignment sale receipts pending a lower court appeal.

Vendors of Adidas- and Asics-brand goods, among others, filed objections this week to an emergency motion from term-lender agent Wilmington Savings Fund Society FSB seeking approval to divert money from consigned goods sales to an escrow account. WSFS had said in its motion that U.S. Bankruptcy Judge Mary F. Walrath's refusal of a similar order denied its right to "adequate protection" of \$276.7 million due under a first-priority lien.

Rights to proceeds from goods owned by others but sold off Sports Authority shelves for a fee have dominated the retailer's restructuring efforts since it sought Chapter 11 protection in March. The company listed about \$1.1 billion in debts at the start of its case, and attributed about 20 percent of its revenues to consigned goods sales.

On May 3, Judge Walrath denied a WSFS motion to escrow the funds on her authority, citing unsettled cases on the issue already under court review. Her court has allowed sales and payments to continue on prebankruptcy terms while Sports Authority pursues more than 160 adversary suits to claw back consignor receipts.

"Although presented as a request for a stay of [Judge Walrath's] adequate protection order, the term loan agent's [district court] motion is nothing more than a poorly disguised request for this court to expedite the merits of the appeal and reverse the bankruptcy court's decision," said attorneys for Agron Inc., which sells Adidas accessories on consignment via Sports Authority.

Agron, which was joined by several other vendors, called WSFS' claimed emergency "self-created," noting that the company waited several days before filing its district court appeal, then filed its action under seal, with those objecting given less than one day to respond.

WSFS said in its motion to stay Judge Walrath's order that it would suffer irreparable harm if the bankruptcy court moved ahead with disbursements.

"Neither the debtors nor any other party argued below that any source of value exists from which the debtors could replace the collateral value being disbursed pursuant to [Judge Walrath's] orders," WSFS said.

Prospects for recovering money due the lenders falls far short of the bankruptcy court's requirements for "adequate protection" of creditors, WSFS said. The bank added that there was no evidence that the escrow plan would harm consignors.

In April, U.S. District Judge Richard G. Andrews denied a similar emergency motion by WSFS, saying that Judge Walrath had yet to issue a final order allowing consignment sales to proceed and noting that WSFS appeared unlikely to succeed and had failed to show irreparable harm, a likelihood of success or a public interest in the intervention.

WSFS has argued that Sports Authority assured lenders previously that consigned goods accounted for only a tiny fraction of sales. Disclosures about actual consignment sales, the bank said, put the company in breach of its original borrowing agreements.

Asics America Corp., another consigned goods supplier to Sports Authority, said in its own objection to an emergency stay that WSFS lacked proof that it had a superior right to the estimated \$85 million now being held by Sports Authority for consignors. About \$18.5 million of that total is due Asics, the company said.

WSFS has yet to justify its right to an emergency stay with evidence that it will probably win the full appeal, Asics argued. Vendors, meanwhile, face their own risks of loss and irreparable harm, the company said, while Sports Authority and WSFS will move ahead under terms already rejected in other cases decided in another district court and in the Third Circuit.

The emergency appeal, filed under seal at 11 p.m. Monday, had not yet been assigned to a federal judge at midday Wednesday. Judge Andrews nevertheless gave those objecting until 5 p.m. Tuesday to file dissenting papers.

WSFS is represented by Robert J. Dehney, Gregory W. Werkheiser and Daniel Butz of Morris Nichols Arsht & Tunnell LLP, and Robert J. Stark, William R. Baldiga, May Orenstein and Bennett S. Silverberg of Brown Rudnick LLP.

Sports Authority is represented by Robert Klyman, Matthew Williams and Keith Martorana of Gibson Dunn, and Michael R. Nestor, Kenneth J. Enos and Andrew L. Magaziner of Young Conaway Stargatt & Taylor LLP.

Agron is represented by Ronald S. Gellert and Margaret F. England of Gellert Scali Busenkell & Brown LLC, and David S. Kupetz and Jessica L. Vogel of Sulmeyer Kupetz PC.

Asics America Corp. is represented by Christopher S. Loizides of Loizides PA, Adrienne K. Walker, Jeffry A. Davis and Eric R. Blythe of Mintz Levin Cohn Ferris Glovsky and Popeo PC,

The case is Sports Authority Holdings Inc., case number 1:16-bk-10527, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Mark Lebetkin.

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