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Sports Authority Lenders Lose Emergency Sales Escrow Bid

By **Jeff Montgomery**

Law360, Wilmington (May 12, 2016, 4:37 PM ET) -- Sports Authority's Chapter 11 term lenders have lost an appeal for an emergency injunction that would have escrowed the bankrupt retailer's receipts from consignment sales, with a U.S. district judge in Delaware saying the lenders failed to prove they faced irreparable harm without the action.

Wilmington Savings Fund Society FSB, the lenders' agent, asked U.S. District Judge Richard G. Andrews to order diversion of money from consigned goods sales to a Wells Fargo bank account pending an appeal of U.S. Bankruptcy Judge Mary F. Walrath's refusal of a similar order.

WSFS said Judge Walrath's decision denied lenders a right to adequate protection of \$276.7 million owed to first-priority lien holders.

"As pointed out in some of the responses, the proposed relief sought by this motion is not really a stay so much as a different order than the one the bankruptcy court entered," Judge Andrews said in a denial opinion signed Wednesday.

Sports Authority, its creditors and suppliers have been battling over rights to proceeds from goods owned by others but sold off retailer shelves for a fee since the company first sought Chapter 11 protection in March. At the time, Sports Authority listed about \$1.1 billion in debts and attributed about 20 percent of its revenues to consigned goods sales.

Judge Andrews said in his opinion that the bankruptcy court has a fuller view of the case and that the district court "should not unnecessarily intrude into the early stages of a large-scale bankruptcy."

WSFS argued that Judge Walrath was mistaken in rejecting an escrow for consignment sales, and said that few of the consignment goods suppliers had proven their right to money from sales had a higher priority than the term lender liens.

The bank also disputed claims that lenders could pursue separate legal actions to claw back money from the suppliers.

"The possibility of such recoveries falls far short of adequate protection, particularly in view of the sheer number of consigning vendors and their uncertain creditworthiness and the cost and other uncertainties of such recovery proceedings," WSFS attorneys said in their emergency request.

Judge Andrews said determinations about whether lenders or consignment vendors have higher priority vary from case to case.

"Based on the representations in the briefing in front of me, it appears that, at worst, appellant would have to bring a lot of litigation to recover damages if it turns out to have a higher priority lien than the consignment vendors," Judge Andrews said.

As the U.S. district court was issuing its decision, consigned goods suppliers continued to file objections in Sports Authority's bankruptcy case, lodging limited objections to a planned sale or auction of the company if terms call for less than full payment to suppliers, as required by Judge Walrath's earlier rulings.

The company had offered a settlement plan on April 1 that would have paid suppliers 60 percent of the amounts received for consignment sales. Weeks later, the company abandoned the plan and pressed ahead with about 160 separate bankruptcy court suits challenging supplier claims and rights.

"It potentially creates a problem in a sale context, depending what kind of buyer you have and whether the buyer intends to comply with the court's order," David S. Kupetz of SulmeyerKupetz, told Law360 on Thursday.

Kupetz, attorney for Agron Inc., which sells Adidas accessories on consignment via Sports Authority said it was unclear if Sports Authority would be sold as a going concern or to one or more liquidators who might intend to sell goods, including consignments, at a discount.

"Because we don't know who the buyers are or what their intent is, we have significant concerns," Kupetz said.

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 SulmeyerKupetz PC.

Consigned goods supplier Asics America Corp. is represented by Christopher S. Loizides of Loizides PA, and Adrienne K. Walker, Jeffrey 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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