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Sports Authority Vendors Want Goods Back Without Liens

By **Vince Sullivan**

Law360, Wilmington (June 17, 2016, 4:15 PM ET) -- Consignment vendors that provided goods for sale at 112 Sports Authority stores told a Delaware bankruptcy judge Friday that they want their unsold goods returned to them free from liens asserted by the debtor's prepetition lenders.

During a telephone hearing with U.S. Bankruptcy Judge Mary F. Walrath, attorneys for three consignment vendors said Sports Authority Holdings Inc. has abdicated its responsibility to keep track of the consigned goods that were supposed to be sold during going-out-of-business sales that are wrapping up at 112 stores. Sports Authority sought permission Wednesday to abandon the remaining goods at the stores, which it plans to vacate by June 30 when it rejects the leases.

David H. Wander of Davidoff Hutcher & Citron LLP, representing consignor Castlewood Apparel Corp., said his client only found out the merchandise was being abandoned a week ago and that Castlewood doesn't know how many units are left at each store.

"We've been scrambling since then to figure out what we can do so \$2.5 million in consigned goods don't get left behind for the landlords of the leases that are to be rejected," Wander said.

Agron Inc. attorney David Kupetz of Sulmeyer Kupetz PC said it was unbelievable that the consignors had found themselves in this situation, where their property is unaccounted for and being left to a third party.

"It is an absolute imperative that at all of these closing stores there be physical counts of all the merchandise," Kupetz said. He explained that a cursory count of one store in West Los Angeles showed there may already be significant shrink in the consignment inventory. He asked that Sports Authority keep some employees on past Sunday to conduct the counts.

Sports Authority's term loan agent, Wilmington Savings Fund Society FSB, said that it has no problem with the consignment vendors taking back the goods, but the lenders say they have liens on those goods and want the value of them paid back.

"The consignment vendors should be forced to disgorge the value of the goods to the debtors," Bennett Silverberg of Brown Rudnick LLP said.

Judge Walrath said that if the debtor returns the goods to the vendors, then Sports Authority's rights to the proceeds would be subject to the law and the contracts already in place. So Sports Authority can pay to remove the goods from the closing stores before rejecting the contracts and store them pending the resolution of adversary proceedings over whose property they are, or it can return the goods to the vendors per the contracts.

The issue will likely crop up again as more than 300 additional Sports Authority stores change hands through a proposed bankruptcy sale in the next few weeks.

The case kicked off in March with the consignment fight and has been adversarial since. On Friday, Judge Walrath issued an order that allowed the Denver Broncos to terminate a sponsorship agreement that included naming rights to the team's Colorado football stadium.

Sports Authority filed for Chapter 11 protection in March, about a month after the company skipped a \$21 million interest payment on outstanding notes. The company listed about \$1.1 billion in debt and cited the rapid and accelerating change in the retail sector with consumers eschewing brick-and-mortar stores for online shopping.

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.

Wilmington Savings Fund Society is represented by Robert J. Dehney, Gregory W. Werkheiser and Daniel B. Butz of Morris Nichols Arsht & Tunnell LLP, and Robert J. Stark, William R. Baldiga and Bennett S. Silverberg of Brown Rudnick LLP.

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

--Additional reporting by Matt Chiappardi. Editing by Aaron Pelc.

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