

Avenue Stores Lender Backs Converting Case To Chapter 7

By Rick Archer

Law360 (November 20, 2019, 7:12 PM EST) -- A lender to insolvent retail chain Avenue Stores Inc. told a Delaware court Wednesday the company's bankruptcy case should be converted to a Chapter 7, saying the move would expose what it said were baseless claims against it by Avenue Stores' unsecured creditors.

In a response to Chapter 7 conversion motions filed by the unsecured creditors committee and the U.S. Trustee's Office, second-lien lender Ornatus URG Holdings LLC and affiliate Versa Capital Management said they were also in favor of a conversion. They said they expected the trustee would pursue \$37 million in clawbacks from unsecured creditors rather than what they called the "fantastical" claims made against them by the committee.

"Both Ornatus Funding and Versa agree that the time has come for a truly independent fiduciary to assume control of the debtors' estates, because the committee has done nothing to advance the resolution of these Chapter 11 cases," they said.

The New Jersey-based Avenue Stores and three affiliates hit Chapter 11 in August, with the closing of its 222 stores in 33 states already underway and plans for a total liquidation of its physical locations.

Last month the court approved the sale of the company's e-commerce assets to stalking horse bidder City Chic Collective USA Inc. for \$17.2 million.

Both the U.S. Trustee's Office and the unsecured creditors committee filed requests to convert the case to a Chapter 7 last week. In a motion filed Friday, the unsecured creditors argued that as an estate representative, a Chapter 7 trustee would have standing to take action on its claims against Ornatus and Versa.

In its motion, the committee said Versa had used its 99% ownership stake of Avenue to force it to take out a \$34.8 million note when Avenue had no means to pay it back, that Versa had failed to perfect its security interest, and that a 2014 dividend payment was made while the company was insolvent.

Versa and Ornatus said in their response Wednesday the committee had "no factual or legal basis" for any of its claims and they would move for sanctions if they were filed. They said the lien perfection arguments were based on a "basic misreading or failure to understand and properly analyze the relevant documents" and that the dividend payment had been made based on an independent solvency analysis.

“To be sure, the extent to which the committee again has wasted everyone's time and money will be exposed by a Chapter 7 trustee and remedied when the committee's professionals' fee applications (and objections thereto) are evaluated by this court,” they said.

Versa and Ornatus said they expected the trustee would instead seek to claw back about \$37 million in avoidable payments to trade vendors, landlords and other unsecured creditors — including \$1.3 million they said had been paid to three committee members — and redistribute it to other creditors, including themselves.

In an email Wednesday, Jay Indyke, counsel for the committee, called the response “over the top hyperbole.”

“But the bottom line is that they are consenting to conversion of the cases, which was the purpose of the motions of both the committee and the US Trustee,” he said.

The U.S. Trustee is represented by Linda J. Casey of the U.S. Trustee’s Office.

Avenue is represented by Robert S. Brady, Andrew L. Magaziner, Ashley E. Jacobs, Allison S. Mielke and Betsy L. Feldman of Young Conaway Stargatt & Taylor LLP.

The unsecured creditors are represented by Christopher M. Samis, L. Katherine Good and D. Ryan Slauch of Potter Anderson & Corroon LLP; and Jay R. Indyke, Summer M. McKee, Cullen Drescher Speckhart and Olya Antle of Cooley LLP.

Ornatus and Versa are represented by Adam G. Landis, Matthew B. McGuire and Jennifer L. Cree of Landis Rath & Cobb LLP.

The case is In re: Avenue Stores LLC, case number 1:19-bk-11842, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Rose Krebs, Jeff Montgomery and Vince Sullivan. Editing by Amy Rowe.