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Hastings Entertainment Parent Gets Access To $90M DIP Loan

By **Vince Sullivan**

Law360, Wilmington (June 14, 2016, 8:34 PM ET) -- The parent company of retailer Hastings Entertainment received interim access Tuesday to a $90 million debtor-in-possession financing package that will help fund its operations as it pursues a sale of its assets in the next 30 days.

During a hearing in Wilmington, Draw Another Circle LLC presented a slate of first-day motions for approval by U.S. Bankruptcy Judge Kevin J. Carey. Attorney Cathy Hershcopf of Cooley LLP said on behalf of the debtors that its Movie Stop retail video chain is already conducting liquidation sales at all of its stores.

The parent company is still in the market for a buyer for its Hastings Entertainment Chain and SP Images Inc., thought Hershcopf acknowledged that is a long shot.

"That's still a Hail Mary for a white knight," she said of the chance of finding a stalking horse bidder to make an offer for the company. "That's why we're here on a dual track, but time is not on our side."

Judge Carey approved the DIP facility Tuesday, overruling some objections of the United States trustee's office. Trustee representative Hannah McCollum said she was concerned about the amount of the DIP loan that will be rolled up to satisfy prepetition liabilities. First-lien lender Bank of America, owed $70 million under a secured credit facility, will be providing the DIP and will have the prepetition debt paid down through the postpetition loan.

McCollum said that the trustee's office is concerned with the "creeping" roll-up that is becoming more prevalent in retail bankruptcy cases.

"I'm concerned about the roll-up primarily because there's no actual new money being provided in the DIP," McCollum said.

Robert Winning of Cooley LLP said on behalf of the debtors that the DIP does in fact provide new liquidity and that $22 million would become available in the first few weeks of the case. He argued that DIP roll-up provisions have become common in recent months as other retailers have sought Chapter 11 protection.

McCollum said that the reason so many of these roll-ups have been allowed is because companies can come in and point to others who have been granted the same relief in bankruptcy court.

A representative for Bank of America, Steven Fox of Riemer & Braunstein LLP, said that the interest rate on the DIP is reduced back to the normal rate of the prepetition lender and is not charged at the default rate the company would be paying in the absence of the new loan.

“On the balance, we think the economics are beneficial to the debtors,” Fox said.

Judge Carey expressed his worries about the proposed timeline for the case, which seeks to complete a potential auction and sale within 30 days. Hershcopf said that Draw Another Circle was the only bidder for the company in 2014 when it was looking for a buyer and that it has not received any interest so far from potential acquiring entities.

“In the extensive prepetition marketing process even a stalking horse bidder would not be found,” Judge Carey said. “But under the compressed postpetition sale schedule something good might happen.”

The company has proposed holding an auction on July 13 and a sale hearing has been scheduled before Judge Carey on July 15. If a sale doesn’t occur, Draw Another Circle will pursue a liquidation of all of its stores and assets in addition to the store closing sales already underway at Movie Stop locations.

Judge Carey granted approval to a typical slate of first-day motions Tuesday, including a request to jointly administer the case of Draw Another Circle and its affiliate debtors, requests to pay taxes, wages and employee benefits and a request to continue some customer programs.

Draw Another Circles filed for Chapter 11 protection Monday, listing $139 million in debt and blaming the rising tide of online retailers for its business woes. In addition to the first lien debt owed to Bank of America, Draw Another Circle owes $10 million on a term loan to Pathlight Capital LLC. Another $59 million in various unsecured trade debt is due to creditors that include landlords and vendors.

In an effort to reverse its declining fortunes, the company has modernized 20 of its Hastings retail locations, but more than 100 have not yet seen those physical improvements. The remodels helped the company’s expense ledger, but its revenue position continued to decline, Hershcopf said Tuesday.

Draw Another Circle LLC is represented by Christopher M. Samis, L. Katherine Good and Chantelle D. McClamb of Whiteford Taylor & Preston LLC and Cathy Hershcopf, Michael Klein and Robert Winning of Cooley LLP.

The Office of the U.S. Trustee is represented by Hannah Mufson McCollum.

Bank of America is represented by Steven Fox of Riemer & Braunstein LLP.

The case is In re Draw Another Circle LLC, et al, case number 1:16-bk-11452, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Emily Kokoll.