

## American Apparel's Ch. 11 Financing Gets Final OK

By **Vince Sullivan**

*Law360, Wilmington (December 12, 2016, 8:17 PM EST)* -- Bankrupt clothing maker and retailer American Apparel LLC received final approval of its \$30 million debtor-in-possession loan Monday in Delaware, but issues surrounding lease rejection procedures could not be rectified without the court's intervention.

During a hearing in Wilmington, attorneys for the company said it had gotten to a point where its final DIP approval was uncontested by negotiating a deal with creditors to push issues over the use of cash collateral to a later date. Talks are continuing between the company and its creditors about cash collateral, and both sides are hopeful a resolution will be forthcoming.

"We've had some very constructive and productive dialogue with not only the prepetition lenders but also the first case liquidation trustee on a global settlement that would resolve our cash collateral objections and the trustee's motion to dismiss this case," unsecured creditors committee attorney Seth Van Alten of Cooley LLP told the court. American Apparel previously took a trip through Chapter 11, with a liquidation trustee appointed by its prior plan seeking to have the new case tossed.

As part of the DIP resolution, a hearing on final approval of cash collateral will be held in the future while the challenge period of the committee will be tolled until then.

A landlord that leases 6,600 square feet of retail space to American Apparel objected to the company's proposed timeline to either assume or reject executory contracts, saying it needs to know what the company plans to do with the store. RSZJ Bedford N 6th LLC, which owns the leased property in Brooklyn, New York, objected to a motion by American Apparel that sought to extend the time it had to decide on the fate of its leases until June, the maximum time allowed under bankruptcy code. The landlord said its lease, negotiated as a result of the company's prior bankruptcy, must be either assumed or rejected within 120 days.

"They seek time within which to market the lease so they don't lose this important asset of the estate," American Apparel attorney James O'Neill said.

The 10-year lease was signed in November, several days before the latest Chapter 11 petition was filed by American Apparel, as part of the settlement of a cure objection from the last bankruptcy case. The biggest change in the lease at the time it was signed last month was that American Apparel would reduce the leased space from 6,600 square feet to 3,300 square feet, and the landlord would construct a wall to separate the unit into two separate leased spaces.

Landlord attorney Douglas Tabachnik of The Law Offices of Douglas T. Tabachnik PC said the landlord cannot market the property to potential renters without knowing if it will have to construct the partition, at a cost of roughly \$250,000. If American Apparel rejects the lease, then it can market the entire 6,600 square feet, but if it assumes the lease, the landlord will have to build the wall per the renegotiated lease.

“The landlord here is deprived of the opportunity to market either half of the store or the whole of the store until it builds the wall, and it won’t know if it has to build the wall until the debtor makes a decision,” Tabachnik said.

O’Neill said that all of the debtor’s assets are up for sale in an upcoming Chapter 11 auction, even though a stalking horse bid only covers the company’s intellectual property and some of its manufacturing facilities and wholesale inventory. It wants to wait to see if any parties submit a bid for the leases of its retail locations or for the retail business as a going concern before it decides to assume or reject any of the leases.

U.S. Bankruptcy Judge Brendan L. Shannon urged the parties to come to a mutually agreed-upon business decision on the matter, but negotiations during a break in the hearing did not result in a resolution. After hearing testimony from the company’s chief restructuring officer and the landlord’s acquisition manager, Judge Shannon said he would render a decision on the matter later this week.

American Apparel had filed for court protection barely a year after the court confirmed a Chapter 11 plan from its previous bankruptcy case, saying its turnaround efforts were unsuccessful.

This time, the company listed about \$215 million in debt, much of it resulting from its previous DIP financing package and related exit facilities.

American Apparel is represented by Scott J. Greenberg, Erin N. Brady and Michael J. Cohen of Jones Day and Laura Davis Jones, James E. O’Neill and Joseph M. Mulvihill of Pachulski Stang Ziehl & Jones LLP.

The committee is represented by Justin R. Alberto, Evan T. Miller and Gregory J. Flasser of Bayard PA and Cathy Hershkopf, Seth Van Aalten and Michael Klein of Cooley LLP.

The landlord is represented by Frederick B. Rosner of The Rosner Law Group LLC and Douglas T. Tabachnik of the Law Offices of Douglas T. Tabachnik PC.

The case is In re: American Apparel LLC et al., case number 1:16-bk-12551, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Breda Lund.