New York Law Journal
SERVING THE BENCH AND BAR SINCE 1888
WWW.NYLJ.COM
An ALM Publication
VOLUME 262—NO. 126
TUESDAY, DECEMBER 31, 2019

BANKRUPTCY UPDATE

Expert Analysis

Chapter 11 in Vogue for Fashion Retailers

By **Edward E. Neiger**

This issue of the Bankruptcy Update focuses on recent restructurings in the retail sector, including iconic luxury department store Barneys New York, fast fashion juggernaut Forever 21 and specialty retailer Destination Maternity.

Barneys New York

On Aug. 6, 2019, luxury retailer Barneys New York and affiliated debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York. *Barneys New York* (Bankr. S.D.N.Y. Case No. 19-36300).

Following a common theme in the retail industry, Barneys attributed its filing to online competition and drastic rent increases that resulted in a liquidity crisis. Initially founded as a men's retailer in 1923, the company grew to sell men's and women's clothing, shoes, accessories, cosmetics, fragrances and home décor at locations in New York, Los Angeles, San Francisco, Boston, Chicago, Las Vegas and Seattle, as well as various discount warehouse locations and concept stores.

The debtors commenced their search for new financing or a buyer in June 2019 but were ultimately forced to file their Chapter 11 cases without a stalking horse commitment in place. To fund operations under Chapter 11, the company sought approval of a $217 million financing package to be funded by Brigade Capital Management and an affiliate of B. Riley Financial, with a substantial portion of the financing slated to roll-up prepetition secured debt held by the debtor-in-possession lenders. The financing arrangement drew the ire of the official committee of unsecured creditors for its limited new money component and onerous lending terms but was nevertheless approved by the bankruptcy court on a final basis on Sept. 4, 2019.

On Oct. 17, 2019, the company announced that it secured a $271 million stalking horse commitment from an affiliate of Authentic Brands Group. Pursuant to the bidding procedures, additional bids were due on Oct. 22, 2019, with an auction slated for Oct. 24, 2019 if additional qualified bids were received. On Oct. 31, 2019, the bankruptcy court approved the sale to Authentic Brands Group, who partnered with DIP lender B. Riley Financial on the deal. The sale resulted in the closure and liquidation of most Barneys' stores, including its Manhattan flagship and a licensing arrangement with Saks Fifth Avenue to create in-store Barneys branded boutiques.

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Following the closing of the sale, Barneys filed its liquidating plan and accompanying disclosure statement which indicated that general unsecured creditors are unlikely to receive distributions under the plan. The bankruptcy court approved the disclosure statement on Dec. 18, 2019.

Forever 21

On Sept. 29, 2019, fast fashion retailer Forever 21 and affiliated debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. *Forever 21* (Bankr. D. Del. 19-12122).

The company, formed by husband and wife partners Jin Sook and Do Won Chang in 1981, attributed the bankruptcy filing to an overly aggressive international expansion plan that overestimated international demand as well as mounting rent obligations. The debtors reported that global sales dropped from a peak of $4.1 billion in 2014 to $3.1 billion in 2019. Through their Chapter 11 cases, the debtors are aiming to refocus operations in the United States and Latin America and emerge with just under 600 open stores.

To fund operations during the Chapter 11 proceedings, the debtors sought approval of a $350 million debtor-in-possession financing facility comprised of a $275 million asset based lending facility and a $75 million term loan. On Nov. 5, 2019, the bankruptcy court authorized the debtors to access the full financing facility on a final basis.

On Nov. 17, 2019, the debtors filed their initial Chapter 11 plan and disclosure statement. The plan is predicated upon the emergence of a plan sponsor, with proposals due on Jan. 8, 2020. The plan contemplates that an as-yet unidentified plan sponsor will fund a plan sponsor investment in the form of cash, take-back notes, new equity or some combination thereof, the debtors will enter into an exit term loan facility to be provided by the plan sponsor and an exit ABL facility with a third party and general unsecured creditors will receive distributions in the form of cash, take-back notes, new equity or some combination thereof.

Destination Maternity

On Oct. 20, 2019, specialty retailer Destination Maternity and affiliated debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. *Destination Maternity* (Bankr. D. Del. 19-12256).

The maternity apparel company attributed its Chapter 11 filing to continuing decline of the brick-and-mortar retail economy, declining birth rates, management turnover and prolonged revenue declines. As of the filing date, the debtors operated 998 retail locations across the United States and Canada under the names Motherhood Maternity, A Pea in the Pod and Destination Maternity. Prior to the commencement of their Chapter 11 cases, the debtors cut their marketing, general and administrative expenses by approximately 10% but could not take advantage of the savings as net sales dropped by nearly 12% during the same time period.

In Chapter 11, the debtors planned to run a going concern sale process simultaneously with targeted store closing sales. To finance their operations and sale process, the debtors obtained authority to utilize the cash collateral of their prepetition secured lenders, Wells Fargo Bank and Pathlight Capital.

On Dec. 12, 2019, Destination Maternity obtained court approval for an approximately $50 million asset sale to Marquee Brands and a joint venture of Gordon Bros. Retail Partners and Hilco Merchant Resources. The transaction provides for the liquidation of Destination Maternity's 235 stand-alone stores while the e-commerce platform and stores-within-stores will remain operational. Liquidation sales are expected to run through March 2020.