**Hypothetical Fact Pattern** (2/5/21)

Trinkets of Vermont, Inc. is a retail business operating in Woodstock, Vermont. TOV sells Vermont themed goods including housewares, maple themed products, and dairy items. Many of the items TOV sells are made in Vermont. The business was started by a husband and wife team in 2007. The initial investment to the business came from the owners by way of a home equity line of credit on their marital residence located in Pomfret, Vermont.

TOV is mostly brick-and-mortar. Positioned on Main Street, Woodstock, TOV's main retail space has historically benefitted from tourist traffic during the fall, winter, and summer. In 2018, TOV launched an e-commerce website where it sells many of the products available at its retail location. Also in 2018 the building in which TOV is located became available for sale. They jumped at the chance. Since March 2018 the real estate is owned by a holding company to which TOV pays rent.

TOV also obtained an American Express account for the business.

In 2019, TOV began exploring opening a second retail location. In November 2019 TOV signed a 5-year commercial lease for a property for retail space in Stowe, Vermont. The husband and wife personally guaranteed the lease. Unfortunately the retail space needed a significant amount of work to capture the TOV image. So, TOV took out a commercial loan, to finance construction on their new Stowe location and fixtures and inventory for that location, secured by (i) TOV’s Woodstock real property. (ii) all of TOV’s business assets , and (iii) the husband and wife’s personal guarantees. Work began immediately with hopes of having the retail space up and running for the holiday season. Unfortunately, the contractor fell behind, the project ran into cost overages and TOV is contemplating suing for breach of contract. The bottom line is that the space was not ready in time for the holiday season.

Then COVID hit. The "stay at home" orders immediately stifled traffic to their Woodstock location. Even though they were able to get the renovation of their Stowe location back on track, the prospect of opening the location in the midst of a pandemic was impractical. The main location was fully staffed with three full-time employees. The abrupt drop in income caused a strain. The business applied for and received a PPP loan which helped TOV to pay its employees and meet its operating expenses. Since the new location never officially opened, the rent became difficult to make.

The business was able to divert some of their personal funds to make some of the payments TOV owed, but were no longer able to do that as of May of 2020. The silver lining is that the online component has done very well - and, if current trends continue, could allow the business to cash flow. Unfortunately, cash reserves are nearly drained and it appears if something isn't done soon, the business will likely have to shut down. American Express had already begun to call them to try to collect the $25,000 TOV owed.

The owners have decided they would like to retain the business and continue operations.

1. Do they have other options?

* Big box store would like to buy them out, but would pay only amt of secured debt
* Sibling lost a job and would put $10k into biz to own half of it
* Shd they accept a loan from mom & dad if it would mean parents mortgaging their house

1. What to do about creditors who are threatening lawsuits?

* There is a stay once bk case is filed
* No more rush to the courthouse; notice always of MFRFS

1. In terms of TOV’s secured debt, what options might they have?

* Unlikely to be able to refinance the commercial loan or HELOC with a bank or credit union in light of business’s current status
* TOV not eligible of ch 12 or 13; conventional ch 11 too big
* TOV could refi the sec’d debt in Sub V *(explore how)*

1. Can the business afford to maintain both locations, in addition to the cost of the e-commerce operations?

* Sub V options as to downsizing, changing the nature of the business, or intentional sale
* Might also be able to restructure the lease or sublet

1. Does TOV need to stop collection activity or get guidance re reorganizing.

* Sub V would impose a stay and include a T to assist TOV in formulating a Sub V plan

1. With respect to the personal liability, will H & W need bankruptcy relief also?

* option of their filing ch 13 to be jointly administered w/ the Sub V ch 11
* the individuals are also under stress about losing their assets

1. If TOV files bankruptcy, who will be in charge of whether the D succeeds?

* Role of DIP, Cs, T and Ct

1. All online