

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

FILED
12:00 MIDNIGHT

In re:

AUG 30 2002

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779-SA
Chapter 7

DROP BOX
United States Bankruptcy Court
Abuquerque, New Mexico

Debtor.

**OBJECTION TO TGAAR PROPERTIES, INC.'S MOTION FOR PAYMENT OF
ADMINISTRATIVE EXPENSES**

Yvette J. Gonzales, the Chapter 7 trustee (the "Trustee") of the estate of Furr's Supermarkets, Inc. ("Furr's"), objects to TGAAR Properties, Inc.'s ("TGAAR's") Motion for Payment of Administrative Expenses, filed on or about August 20, 2002 and docketed as #1807 (the "Motion"), and states:

1. There are two parts to the Motion. First, TGAAR argues it is entitled to post-conversion rent or charges of approximately \$175,000 for "storing for eight months certain grocery store equipment that sold for a net of \$19,700. Second, TGAAR argues that it is entitled to at least \$15,000 in damages suffered in connection with the sale and removal of the equipment. These arguments, neither of which has merit, will be addressed in turn.

The Estate Should Not Be Required to Pay Rent or Storage Charges to TGAAR

2. TGAAR was a landlord of Furr's with respect to a store in Midland, Texas, referred to as #966.

3. Effective August 31, 2001, Furr's rejected the lease for store 966, pursuant to the Court's order entered on or about September 6, 2001 and docketed as number 1031 (the "Lease Rejection Order"). The Lease Rejection Order granted TGAAR relief from the automatic stay to take possession of its real property.

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4. Furr's was able to work out arrangements with most landlords of closed stores that contained equipment owned by Furr's (as opposed to leased equipment from an equipment lessor such as Boeing, Finova, etc.), to either sell the equipment to the landlord, or to sell the equipment to others by private sale or auction. Furr's was never able to reach an agreement with TGAAR about the equipment in store 966, because TGAAR always insisted on being paid a substantial portion of any sales proceeds for "rent," "storage," or other charges.

5. TGAAR never sought relief from this Court to remove the equipment in store 966. If TGAAR had really needed to remove the equipment, it would have taken some action. Instead, TGAAR periodically demanded that the Trustee remove the equipment, but then refused to let her do so unless she paid TGAAR most or all of the net proceeds.

6. TGAAR's methods are demonstrated by the objection it lodged when the Trustee filed her motion to sell the store 966 equipment by auction. In response to the Trustee's motion, TGAAR asked that the Court condition any approval to sell the equipment on the payment of rent to TGAAR. The net proceeds are now tied up until the Court rules on the Motion.

7. The bankruptcy code does not allow a landlord to obstruct the removal of the estate's property from a former leasehold, and then collect storage or rent charges during the time the equipment remained on the property.

8. There is no lease agreement between the Trustee and TGAAR, so the amount of rent required under the former lease between Furr's and TGAAR is irrelevant.

9. Absent a written agreement or a statute, TGAAR has no right to charge for "storing" Furr's property. Any landlord's lien is subordinate to the security interest of the estate's secured lenders, or is avoidable.

The Estate Should Not be Required to Pay Any Damages to TGAAR Because of the Auction

10. TGAAR also seeks at least \$15,000 in damages, allegedly caused to TGAAR's building when the equipment was sold. This request is meritless, because any damage suffered in connection with the auction was the fault of TGAAR, not the Trustee or her auctioneer. Similarly, any junk or trash remaining at the store after the auction was left because of TGAAR's actions. This is shown by the following:

a. Before the auction, TGAAR refused to give the auctioneer access to the back of the store. Some valuable items were located there, such as refrigeration pumps, compressors, and walk-in refrigerators. Other property owned by the estate may have been stored or hidden there, but the Trustee had no way of determining this because TGAAR would not let the auctioneer in the back of the store to look;

b. The auction was held May 30, 2002. The auctioneer left in the afternoon of May 31, 2002, his employees left on or about June 3, 2002, and his representative (the owner of the Second Hand Store of El Paso, Texas, and a trusted friend) left on June 9, 2002. During that time, buyers of the equipment were removed their purchases from the store. One of the owners of TGAAR was present during the auction, and TGAAR's employee, named Frank, was present much of the time thereafter;

c. On June 7, 2002 TGAAR changed the locks on the building;

d. When the auctioneer's representative left the store on June 9, 2002, there was no appreciable damage caused by removal of the equipment;

e. While the auctioneer's employee's and representative were at the store supervising removal of the equipment, Frank was letting people into the store at all hours;

f. The auctioneer was not able to sell certain "coffin cases," which the landlord later sold. When the buyer removed the coffin cases, on information and belief the buyer

damaged the floor;

g. The auctioneer did not sell the copper refrigeration pipes running through the store because, although valuable, the auctioneer knew that removal of the pipes could cause damage;

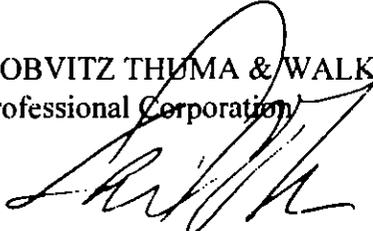
h. Some of the buyers knew TGAAR's owners well. One buyer, Jim Sparr of Custom-mize, who purchased certain reach-in cases, told the auctioneer's employee not to worry about overseeing the removal of the equipment, because he knew the owner well and was going to be at the store for a month, removing his equipment and cleaning the store; and

i. With respect to cleaning the premises, the auctioneer's employees did a lot of trash removal and cleaning, but were stopped fairly early on in the process by a janitorial staff hired by TGAAR, who told them not to worry about cleaning up the store, as they were going to take care of it.

11. Based on the foregoing, and other facts, TGAAR's damage claim is without merit.

WHEREFORE, the Trustee prays that the Motion be denied, and for all other just and proper relief.

JACOBVITZ THUMA & WALKER
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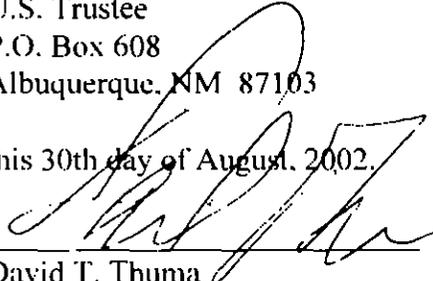
The undersigned hereby certifies that a
copy of the foregoing was mailed and e-mailed to:

Robert K. Whitt
505 N. Big Spring
Suite 402
Midland, TX 79701

And mailed to:

U.S. Trustee
P.O. Box 608
Albuquerque, NM 87103

this 30th day of August, 2002.



David T. Thuma