

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

FILED  
12:00 MIDNIGHT  
MAR 17 2003

DROP BOX  
United States Bankruptcy Court  
Albuquerque, New Mexico

IN RE:

CASE NO. 11-01-10779-SA

FURR'S SUPERMARKETS, INC.,

DEBTOR.

MOTION BY SUCON, INC. d/b/a SUITT CONTRACTORS  
FOR RELIEF FROM AUTOMATIC STAY

COMES NOW creditor Sucon, Inc. d/b/a Suitt Contractors (hereinafter "Suitt"), by and through counsel as undersigned, and respectfully requests the Court to enter an Order granting it Relief from the Automatic Stay to pursue its claims in state court against the Debtor. In support thereof, Suitt states as follows:

1. Suitt is a contractor which was hired by Debtor provide labor and materials for improvements to its store located at 8100 Ventura Blvd. NE, Albuquerque, New Mexico 87122.
2. The value of the labor and materials provided by Suitt for such project was \$73,356.60
3. Suitt billed Debtor and demanded payment. However, Debtor refused and failed to pay.
4. On or about January 23, 2001, Suitt recorded and served a mechanic's/materialman's lien upon the real property located at 8100 Ventura Blvd NE, Albuquerque, New Mexico 87122, in compliance with New Mexico law.
5. The Debtor does not own the real property upon which Suitt's lien attached. At all times pertinent hereto, such real property was owned by Broadway Vista Partners, a California General Partnership.

*2002*

6. Upon information and belief, Furr's leased such property from Broadway Vista Partners.

7. Pursuant to New Mexico law, §48-2-10 NMSA 1978, a holder of a mechanic's/materialman's lien has only two (2) years to take Court action to enforce or foreclose upon its lien. That two (2) year period ended January 23, 2003.

8. On January 22, 2003, Suitt filed an action in the Second Judicial District Court to enforce and foreclose upon its lien. An Amended Complaint was filed on March 12, 2003. The case is styled *Sucon v. Broadway Vista partners, et. al.*, Case No. CV-2003-00557.

9. The Chapter 7 Trustee in this case was named as a Defendant in the Amended Complaint, because the Debtor's estate is a necessary party to the action. However, the property at issue in the action is not estate property, and no judgment is requested against the Debtor or the estate; thus the suit is not in violation of the automatic stay.

10. Because Furr's is the obligor on the debt owed to Suitt which is the basis for its lien against the property of Broadway Vista Partners, Suitt's claims against the Debtor must be brought as a part of the present state court case.

11. Suitt requests that the automatic stay be lifted to allow it to amend its Complaint in State Court and pursue its monetary claims against the estate.

12. Suitt asserts that the statute of limitations which forced it to file suit to enforce its lien during pendency of Debtor's Chapter 7 Bankruptcy case and the nature and relatedness of its claims against the Debtor constitute sufficient cause for modification of the automatic stay.

WHEREFORE, Sucon, Inc. d/b/a Suitt Contractors respectfully request the Court to enter an Order granting it relief from the automatic stay to allow it to pursue its monetary claims against the

Respectfully Submitted.

PUCCINI & MEAGLE, P.A.

By: 

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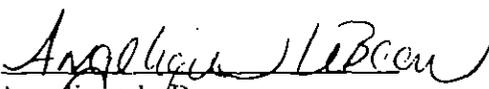
I hereby certify that a true and correct copy of the foregoing pleading was sent on this 17<sup>th</sup> day of March, 2003 via First Class U.S. Mail to the following:

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UNITED STATES  
U. S. BANKRUPTCY COU  
DISTRICT OF NEW MEXICO  
Albuquerque Division

# 23003344 - RT  
March 18, 2003

Code	Case #	Qty	Amount
STAY 1/1	01-10779	1 @	75.00
			75.00 CR
Judge - James Starzynski			Albuquer
Debtor - FURR'S SUPERMARKETS, INC.			

TOTAL → 75.00

FROM: SHAY E. MEAGLE  
CR 186965