

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

MOTION TO APPROVE SETTLEMENT OF ADVERSARY PROCEEDING 03-1036

Yvette G. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, pursuant to F. R. Bankr. P. 9019, moves the Court to approve the settlement of adversary proceeding No. 03-1141, captioned *Yvette J. Gonzales, Trustee v. CSFB LP Holding, f/k/a Credit Suisse First Boston Private Equity* (the "Preference Action"), against the named defendant ("Preference Defendant"), and in support hereof states:

1. Commencement and Conversion of Case. On February 8, 2001 (the "Petition Date"), Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, this Court entered an order converting the chapter 11 case to a case under chapter 7. On that date the Trustee was appointed as the trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

2. Jurisdiction And Venue. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The Preference Action. In the Preference Action, the Trustee sought to recover \$128,080 from the Preference Defendant, plus all other amounts, if any, recoverable under 11 U.S.C. § 547.

4. The Settlement of the Preference Action. Preference Defendant has offered to pay the Trustee \$104,434 in full satisfaction of any and all claims asserted in the Adversary Action (the "Preference Settlement"). In consideration of the Preference Settlement, upon the entry

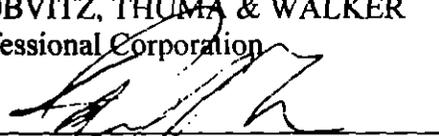
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of a final non-appealable order granting this Motion and approving the Preference Settlement, the Preference Action will be dismissed with prejudice and the Trustee will release any and all estate claims against Preference Defendant under 11 U.S.C. §547. The parties shall execute a settlement and release agreement in the form attached hereto as Exhibit A. The Preference Defendant may file a proof of claim for the amount paid in settlement, as an unsecured, nonpriority, prepetition claim.

5. The Preference Settlement is fair and equitable, and is in the best interests of and beneficial to the Debtor's estate and the creditors.

WHEREFORE, the Trustee requests that the Court enter an order approving the Preference Settlement and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER
a Professional Corporation

By: 

David T. Thuma
500 Marquette NW, Suite 650
Albuquerque, NM 87102
(505) 766-9272

Attorneys for the Trustee

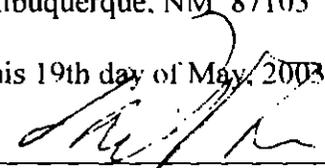
This certifies that a copy of the foregoing Motion was served by mail on:

Ronald E. Andazola
P.O. Box 608
Albuquerque, New Mexico 87103

Paul Fish
P.O. Box 2168
Albuquerque, NM 87103

Jennie D. Behles
P.O. Box 849
Albuquerque, NM 87103

this 19th day of May, 2003.



David T. Thuma

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement"), made this ___ day of _____, 2003 by and between Yvette J. Gonzales (the "Plaintiff"), acting in her capacity as the duly appointed Chapter 7 Trustee of the Furr's Supermarkets, Inc. bankruptcy estate (the "Furr's Estate"), on the one hand, and CSFB LP Holding, f/k/a Credit Suisse First Boston Private Equity (the "Defendant"), on the other, is intended to extinguish the claims and obligations set forth below.

WHEREAS on or about February 7, 2003, the Plaintiff filed her Complaint to Avoid Preferential Transfers against the Defendant in the case captioned *Yvette J. Gonzales, Trustee v. CSFB LP Holding, f/k/a Credit Suisse First Boston Private Equity*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 03-1036 S (the "Avoidance Action");

WHEREAS the Plaintiff and the Defendant desire to settle the Avoidance Action and have agreed to execute this Agreement for such purpose and to extinguish the claims and obligations set forth below:

NOW THEREFORE, it is agreed between the Plaintiff and the Defendant as follows:

1. The Plaintiff will dismiss the Avoidance Action, with prejudice, within five business days of receipt of the payment from the Defendant set forth in paragraph 2 below.
2. The Defendant will pay the Plaintiff \$104,434 within ten business days of the date that the order approving this Agreement becomes a final and non-appealable order, the sufficiency of which the Plaintiff hereby acknowledges. The Plaintiff shall provide the Defendant with a Internal Revenue Service Form W-9 within ten business days after entry of the order approving this Agreement.

EXHIBIT

A

3. The Plaintiff and the Defendant shall each bear their respective costs and attorneys' fees incurred in the Avoidance Action, and in connection with settlement of the Avoidance Action.

4. The Plaintiff, on her behalf and on behalf of the Furr's Estate, hereby voluntarily and knowingly releases and forever discharges the Defendant and its divisions, agents, officers, directors, employees, attorneys, predecessors, successors, and assigns from any and all claims, demands, causes of action, costs, expenses, and requests for attorneys' fees, whether asserted or unasserted, known or unknown, with respect to any claims which the Plaintiff or the Furr's Estate may have against them under 11 U.S.C. §§544, 547, 548, 549, and/or §550, including but not limited to the claims that were made or raised in the Avoidance Action.

5. The Defendant, on its behalf and on behalf of its divisions, voluntarily and knowingly releases and forever discharges the Plaintiff, the Furr's Estate, and all of the Plaintiff's and/or the Furr's Estate's agents, officers, directors, employees, attorneys, predecessors, successors, and assigns, from any and all claims, demands, actions, costs, expenses, and attorneys' fees assertable or allowable under 11 U.S.C. §503(b); provided, however, that the Defendant may file a proof of claim in the Furr's bankruptcy case for the amount paid in settlement, as an unsecured, nonpriority, pre-petition claim.

6. The Plaintiff and the Defendant each acknowledge having had full opportunity to consult with counsel of their choice before executing this Agreement.

7. The Plaintiff and the Defendant warrant and represent to the other that no promise, inducement, or agreement not expressed herein has been offered, made, or relied on, and that this Agreement contains the entire agreement between the parties.

8. This Agreement is entered into under the laws of the State of New Mexico. Any dispute concerning this Agreement shall be brought before the United States Bankruptcy Court for the District of New Mexico. If an action is filed to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

9. The parties understand and agree this settlement is the compromise of doubtful and disputed claims, and the agreements and payments set forth herein are not to be construed as admissions of liability by any party, which liability is expressly denied.

IN WITNESS WHEREOF, the Plaintiff and the Defendant have executed this Agreement as of the date first written above.

The Plaintiff

The Defendant

COPY

Yvette J. Gonzales, in her capacity as
the Chapter 7 Trustee of the Furr's
Supermarkets, Inc. bankruptcy estate

CSFB LP Holding, f/k/a Credit Suisse First
Boston Private Equity

By: 

Bruce Albert
Vice President and Counsel
Credit Suisse First Boston LLC
Counsel for CSFB LP Holding
f/k/a Credit Suisse
First Boston Private Equity