

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,  
Debtor.

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

**ORDER APPROVING SETTLEMENT OF ADV. PROCEEDING 03-1036**

THIS MATTER came before the Court on the Chapter 7 Trustee's Motion to Approve Settlement of Adversary Proceeding 03-1036 (doc. #2093) (the "Motion"). Having reviewed the Motion, and being otherwise advised in the matter, the Court FINDS:

A. On February 8, 2001, Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, the chapter 11 case was converted to a case under chapter 7. On the same day Yvette Gonzales was appointed the trustee for the Debtor's bankruptcy estate (the "Trustee"), in which capacity she continues to serve.

B. The Court has jurisdiction over the 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.

C. In Adv. Pro. No. 03-1036 (the "Preference Action"), the Trustee sought to recover \$128,080 from CSFB LP Holding, f/k/a Credit Suisse First Boston Private Equity (the "Preference

Defendant"), plus all other amounts, if any, recoverable pursuant to 11 U.S.C. § 547.

D. Preference Defendant has offered to pay the Trustee \$104,434 in full satisfaction of any and all claims asserted in the Preference Adversary Proceeding (the "Settlement Amount"). In consideration of the Settlement Amount, the Preference Action will be dismissed with prejudice and the Trustee will release certain estate claims against Preference Defendant in accordance with the Settlement and Release Agreement executed by the parties dated May 22, 2003 attached hereto as Exhibit A (the "Settlement Agreement"). The Preference Defendant may file a proof of claim for the amount paid in settlement, as an unsecured, nonpriority, prepetition claim.

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

F. On May 19, 2003, notice of the Motion (docket #2097) (the "Notice") was mailed by first class United States mail, postage prepaid, to all persons on the limited mailing matrix maintained in the bankruptcy case, as shown by the certificate of service on the Notice filed with the Court;

G. The Notice provided for a deadline to object to the Motion of June 11, 2003, which was 23 days after the date of mailing of the Notice. The Notice was sufficient and appropriate

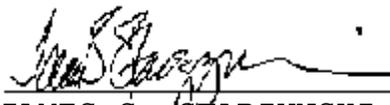
in the particular circumstances;

H. The deadline to object to the Motion has expired, and no objections to the Motion were filed;

I. The requirements of the Bankruptcy Code and Rules, including Rule 9019, have been satisfied with respect to the relief granted by this Order. The proposed settlement is fair and equitable, and in the best interests of and beneficial to the Debtor's estate and the creditors; and,

J. Entry of this Order, without further notice or hearing, is appropriate.

THE COURT THEREFORE ORDERS that the Motion and the Settlement Agreement are approved. Preference Defendant shall pay the Trustee the Settlement Amount pursuant to the Settlement Agreement, the Preference Action shall be dismissed with prejudice, and the Preference Defendant may file an unsecured, nonpriority, prepetition claim for the Settlement Amount.



JAMES S. STARZYNSKI  
United States Bankruptcy Judge

APPROVED:  
JACOBVITZ, THUMA & WALKER, P.C.  
By: submitted by e-mail 9/9/01  
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Attorneys for the Trustee

I hereby certify that on September 11, 2003, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

Mary B. Anderson  
Mary B. Anderson

## 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 5 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.

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, 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 affiliates, subsidiaries, and 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, 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

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

By: \_\_\_\_\_

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