

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 PROCEEDINGS 02-01092

Yvette G. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, pursuant to Bankruptcy Rule 9019, moves the Court for an order approving the settlement of adversary proceeding No. 02-01092, captioned *Yvette J. Gonzales, Trustee v. Frito Lay North America, a Division of Pepsico, Inc.* (the "Preference Adversary Proceeding"), 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.

2. Appointment of Chapter 7 Trustee. On December 19, 2001, the United States Trustee appointed Yvette Gonzales as the Trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

3. 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.

4. The Preference Adversary Proceeding. In the Preference Adversary Proceeding, the Trustee sought to recover approximately \$356,000.00 from defendant Frito Lay North America ("Frito Lay"), plus all other amounts, if any, recoverable pursuant to 11 U.S.C. § 547.

5. The Settlement of the Preference Adversary Proceeding. Frito Lay has offered to pay the Trustee \$302,000 in full satisfaction of any and all claims asserted in the Preference Adversary Proceeding (the “Preference Settlement”). The Preference Settlement is fair and equitable, and is in the best interests of and beneficial to the Debtor’s estate and the creditors.

6. The Settlement and Release Agreement. If the proposed settlement is approved, the parties would execute a settlement and release agreement memorializing the terms of their settlement, a copy of which is attached hereto as Exhibit A.

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

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this 21st day of November, 2003.

Filed electronically
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