

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED  
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2003 DEC -2 PM 4: 19

In re:  
FURR'S SUPERMARKETS, INC.,  
Debtor.

Case No. 7-01-10779-SA  
Chapter 7  
U.S. BANKRUPTCY COURT  
AT SANGRE DE TORO, N.M.

**MOTION TO APPROVE SETTLEMENT OF  
ADVERSARY PROCEEDING 02-1110 S**

Yvette Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, moves the Court for an order approving the settlement of all claims the estate has against Packaged Ice, Inc., d/b/a Reddy Ice Corporation ("Packaged Ice"), as set forth in the adversary proceeding No. 02-1110-S, captioned *Yvette J. Gonzales, Trustee v. Packaged Ice, Inc. d b a Reddy Ice Corporation* (the "Adversary Proceeding"), pursuant to F.R.Bankr.P.9019, and in support hereof states:

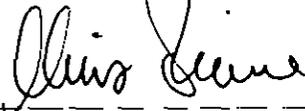
1. **Commencement and Conversion of Case.** On February 8, 2001, (the "Petition Date"), the Debtor filed a Voluntary Petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, this Court entered an Order converting the Chapter 11 case to a case under Chapter 7.
2. **Appointment 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 Adversary Proceeding.** In the Adversary Proceeding, the Trustee sought to recover One Hundred Sixty Two Thousand Two Dollars and 27/100 (\$162,002.27) from Packaged Ice, plus all other amounts, if any, recoverable pursuant to 11 U.S.C. §547.

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5. **The Settlement.** Reddy Ice has offered to pay the Trustee One Hundred Thirty Seven Thousand Seven Hundred One Dollars and 93/100 (\$137,701.93), with \$68,850.96 to be paid immediately upon the entry of an Order approving the settlement, and the remainder of \$68,850.97 to be paid six months from the date of the entry of an Order approving the settlement, in full satisfaction of any and all claims, including without limitation claims asserted in the Adversary Proceeding (the "Settlement"). The full terms of the Settlement are set forth in the attached Settlement Agreement. The Settlement is fair and equitable, and 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 Settlement and for such other relief as may be just.

**DAVIS & PIERCE, P.C.**



Chris W. Pierce, Esq.  
Post Office Box 6  
Albuquerque, New Mexico 87103  
(505) 243-6129

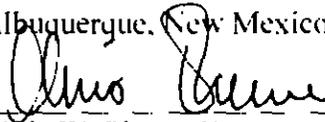
I hereby certify that a true and correct copy of the foregoing was mailed on December 2, 2003, to:

Keith Miles Aurzada, Esq.  
Sarah A. Schultz, Esq.  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1700 Pacific Ave., Suite 4100  
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500 Marquette NW, Suite 650  
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Ronald F. Andazola  
Post Office Box 608  
Albuquerque, New Mexico 87103

  
\_\_\_\_\_  
Chris W. Pierce, Esq.

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

The parties to this Settlement Agreement and Mutual Release (hereinafter, "Agreement") are Yvette J. Gonzales, Chapter 7 Trustee in In re: Furr's Supermarkets, Inc., No. 7-01-10779 SA (the "Adversary Proceeding"), in the United States Bankruptcy Court for the District of New Mexico, for herself and on behalf of the Furr's Supermarkets, Inc. bankruptcy estate, and its or each of their current or former general partners, limited partners, officers, directors, stockholders, employees, attorneys, agents, servants, successors and assigns, spouses, heirs, executors, administrators, attorneys, and any and all other related persons, entities, associations or corporations, whether or not herein named or referred to (collectively, hereinafter, "Trustee" or "Plaintiff"), and Packaged Ice, Inc. d/b/a Reddy Ice Corporation, and its current or former general partners, limited partners, officers, directors, stockholders, employees, attorney, agents, servants, successors and assigns, spouses, heirs, executors, administrators, attorneys, and any and all other related persons, entities, associations or corporations, whether or not herein named or referred to (collectively, hereinafter, "Packaged Ice." or "Defendant").

WHEREAS on or about May 23, 2002, the Plaintiff filed her Complaint to Avoid Preferential Transfers against the Defendant in the case captioned *Yvette J. Gonzales, Trustee v. Reddy Ice Corporation*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 02-1110 S (the "Avoidance Action"), which caption was later amended to include *Packaged Ice, Inc.*;

WHEREAS the Plaintiff and the Defendant desire to settle the Lawsuit 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. Payment. Packaged Ice agrees to pay Trustee the sum of \$137,701.93 in full and final settlement of the Avoidance Action. Payments shall be due and payable on the following dates:

<u>Amount</u>	<u>Date</u>
\$68,850.96	Date of Entry of Order Approving Settlement
\$68,850.97	Six Months from the Date of the Entry of an Order Approving Settlement

Interest shall not accrue on the payments to be made under this Agreement (except in the event of default, as set out below). Payments may be made without penalty in advance of their due dates. Payments shall be made to the Trustee at Yvette J. Gonzales, Chapter 7 Trustee, Post Office Box 1037, Placitas, NM 87043-1037.

Upon completion of the payments as set out above, the Trustee shall submit an Order Dismissing the Avoidance Action with Prejudice to the Bankruptcy Court, and the Trustee shall agree to timely execute and/or file any other documents and pleadings necessary to accomplish this dismissal.

2. Security, Default, Notice And Opportunity To Cure. In order to secure payment of the amounts provided for in this Agreement, Packaged Ice, through its attorney, shall approve a form of judgment that provides for judgment by the Trustee against Packaged Ice in the amount of \$162,002.27, together with interest thereon at the federal statutory judgment rate from the date of entry of that judgment. This form of judgment shall be held by Trustee's attorney and shall not be submitted to nor entered of record by the bankruptcy court except upon the occurrence of an uncured payment default by Packaged Ice.

If Packaged Ice fails to make any of the payments required by this Agreement by their due dates, the Trustee may make written demand upon Packaged Ice, with such notice to specify the default and the curative action required, at Packaged Ice's address as follows:

Steven Janusek  
Chief Financial Officer  
3635 Travis Street, Suite 170  
Dallas, TX 75204

with a copy to Keith Miles Aurzada, Esq., Akin Gump Strauss Hauer & Feld LLP, 1700 Pacific Ave., Suite 4100, Dallas, TX 75201-2675, or at such other address that Packaged Ice may designate by a notarized statement delivered to the Trustee.

Notice in writing shall be given by certified mail, return receipt requested, addressed to Packaged Ice at the effective address for Packaged Ice as provided in this Agreement, with a copy to Packaged Ice's attorney.

If Packaged Ice fails or neglects to cure any default within Fourteen (14) business days after the date Trustee's default notice is mailed, then the Trustee may submit the form of judgment held by Trustee's attorney to the bankruptcy court for entry. In such event, Trustee, upon entry of judgment, shall cause to be filed a Partial Satisfaction Of Judgment in an amount equal to the sum payments paid prior to the default by Packaged Ice. By way of example, if prior to default Packaged Ice has paid the Trustee a total of \$90,000.00, then in that event the Trustee shall file a Partial Satisfaction Of Judgment in that amount, with the result being that the amount remaining due on the judgment would be \$72,002.27 (\$162,002.27 minus \$90,000.00 paid), plus applicable statutory interest accrued on the judgment from the date of entry of the judgment.

If the final day for curing the default shall fall on a Saturday, Sunday, or Federal holiday, then the period for curing the default shall extend to the close of business on the next regular business day.

3. No Admission. It is understood and agreed that the release of Claims in this Agreement is the compromise of doubtful and disputed Claims, and that the payment and

consideration given for the release of Claims should not be construed as an admission of liability on the part of any party to this Agreement. Each party denies liability to the others and intends merely to avoid litigation by buying their peace.

4. Release of Claims. The Trustee does hereby release and forever discharge Packaged Ice, and Packaged Ice does hereby release and forever discharge the Trustee, from any and all rights, claims, demands, damages, actions, causes of action and suits, of any kind or nature whatsoever, whether known or unknown, contingent or certain, developed or undeveloped, liquidated or unliquidated, now existing or hereafter arising (collectively, "Claims"), that each, individually or collectively, has now or might have in the future have against the other. The term "Claims" includes but is not limited to, those claims asserted or which could have been asserted by the Trustee or Packaged Ice in United States Bankruptcy Court for the District of New Mexico Adversary Proceeding No. 02-1110-S, entitled, Yvette Gonzales, Trustee, Plaintiff, vs. Packaged Ice, Inc., d/b/a Reddy Ice Corporation, Defendant, provided, however, that nothing contained herein shall operate to waive or release any claims arising in connection with this Agreement and its enforcement, including without limitation the payments set out in Paragraph 1, above, or the default provisions contained in Paragraph 2, above.

5. Trustee's Representations. The Trustee states that she is the proper party to assert the causes of action referred to above and all claims made in the Adversary Proceeding or otherwise released under this Settlement Agreement: that she has not assigned, pledged or otherwise transferred or encumbered any unasserted or asserted right, claim or cause of action against Packaged Ice or any claim or cause of action that is released under this Settlement Agreement: that the person executing this Settlement Agreement for The trustee has the authority

to act on her behalf for the purpose of which she purports to act and to bind her to the terms and conditions herein, and that she is the proper party to execute this Settlement Agreement.

6. Packaged Ice's Representations. Packaged Ice states that the person executing this Settlement Agreement for it has the authority to act on its behalf for the purpose for which he/she purports to act and to bind it to the terms and conditions herein; and that it is the proper party to execute this Settlement Agreement.

7. Choice of Law. 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 attorney fees.

8. Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

9. Parties Bound. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, successors and assigns.

10. No Assignment. Each party to this Agreement acknowledges and represents that he, she, or it is the owner of the Claims released by this Agreement, and has not voluntarily or involuntarily assigned the Claims released by this Agreement to any other person or entity.

11. Time. Time is of the essence in the performance of the promises contained in this Agreement.

12. Neutral Interpretation. This Agreement shall not be construed against any party because the Agreement was drafted by that party.

13. Terms Contractual. The terms of this Agreement are contractual and not mere recitals.

14. Counterparts. This Agreement may be executed in counterparts, each of which, including faxed copies, shall be taken to be an original.

TRUSTEE

\_\_\_\_\_  
Yvette J. Gonzales  
Chapter 7 Trustee for Furr's Supermarkets, Inc.

STATE OF NEW MEXICO            )  
  )ss.  
COUNTY OF BERNALILLO        )

The foregoing Settlement Agreement and Mutual Release was acknowledged before me this \_\_\_ day of \_\_\_, 2003, by YVETTE J. GONZALES, Chapter 7 Trustee in Furr's Supermarkets, Inc., Debtor, Chapter 7 bankruptcy case, No. 7-01-10779 SA.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

PACKAGED ICE, INC., d/b/a  
REDDY ICE CORPORATION

\_\_\_\_\_  
By: Steven Janusek  
Its: Chief Financial Officer

ACKNOWLEDGEMENT FOR CORPORATION

STATE OF \_\_\_\_\_ )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Settlement Agreement and Mutual Release was acknowledged before me this \_\_\_ day of \_\_\_, 2003 by Steven Janusek, Chief Financial Officer of Packaged Ice, Inc. dba Reddy Ice Corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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