

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

**ORDER APPROVING SETTLEMENT OF ADV. PROCEEDING No. 03-1023 S
(Gonzales v. Roswell H2O LLC) AND JUDGMENT IN FAVOR OF TRUSTEE**

THIS MATTER came before the Court on the Chapter 7 Trustee's Motion to Approve Settlement of Adversary Proceeding No. 03-1023 S captioned *Yvette J. Gonzales, Trustee v. Roswell H2O, LLC, aka Fiesta Waters LLC* (the "Adversary Proceeding"). The Motion is filed as docket No. 2188. 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, 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. 03-1023 S (the "Adversary Proceeding"), the Trustee sought to recover \$21,950.52 from the

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

D. Defendant and the Trustee have stipulated to this order and judgment subject to approval by the Court, after notice, and have stipulated to Judgment in Trustee's favor and against Defendant in the amount of \$21,950.52 (the "Preference Judgment"). The parties have agreed that (i) Defendant shall satisfy the Preference Judgment by paying the Trustee a total of \$16,462.89 plus interest at the rate of ten percent (10%) per annum, in six (6) equal monthly installments of \$2,824.40 beginning November 30, 2003 and due thereafter on or before the 30th day of each month until paid in full, in full satisfaction of the Preference Judgment and any and all claims asserted in the Adversary Proceeding (the "Preference Settlement"); (ii) payments will be made to Yvette Gonzales, chapter 7 trustee, Case No. 7-01-10779-SA, c/o Jacobvitz, Thuma & Walker, P.C., 500 Marquette, NW, Suite 650, Albuquerque, NM 87102; (iii) following payment in full of the Preference Settlement without default, the Trustee will file a satisfaction of the Preference Judgment and the Adversary Proceeding will be dismissed with prejudice; (iv) any payment on the Preference Settlement received before approval by the Court will be held in trust by Trustee's counsel; and (v) in the event the Court did not approve the Preference Settlement, payments received on the Preference Settlement will be returned

to the Defendant pending further resolution of the Adversary Proceeding.

E. Defendant and the Trustee have stipulated further that if any of the monthly installments of the Preference Settlement is not received in full and in good funds by the fifth day of the day of the month on which it is due, then (i) Defendant will be in default under the terms of the Preference Settlement, (ii) the Preference Judgment, plus interest at the rate of ten percent from the date of entry of the Preference Judgment, less the total of all payments received on the Preference Settlement, will become due and payable in full; and (iii) the Trustee may take any lawful action to enforce and collect the balance of the Preference Judgment. The Bankruptcy Court shall have jurisdiction to enforce the Preference Settlement and the Preference Judgment. Trustee will have no obligation to give notice of default.

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

G. On September 9, 2003, notice of the Motion (docket #2194) (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.

H. The Notice provided for a deadline to object to the Motion of October 2, 2003, which was 23 days after the date of mailing of the Notice. The Notice was sufficient and appropriate in the particular circumstances.

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

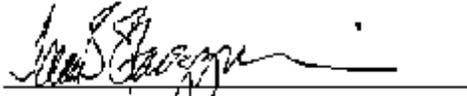
J. The requirements of the Bankruptcy Code and Rules, including Rule 9019, have been satisfied with respect to the relief granted by this Order. The proposed settlement is fair and equitable, and in the best interests of and beneficial to the Debtor's estate and the creditors.

K. Entry of this Order and Judgment, without further notice or hearing, is appropriate.

THE COURT THEREFORE ORDERS, ADJUDGES AND DECREES as follows:

1. The Motion is approved.
2. Judgment is entered in Trustee's favor and against Defendant in the amount of \$21,950.52 (the "Preference Judgment").
3. Subject to the stipulated terms and conditions described in the Findings above, which are hereby approved, Defendant shall satisfy the Preference Judgment by paying the Trustee a total of \$16,462.89 plus interest at the rate of ten percent (10%) per annum; the unpaid balance of the Preference Judgment, plus interest, will become due and payable in full upon

Defendant's default; and following timely payment of the amounts described in this Judgment, the Trustee will file a satisfaction of the Preference Judgment and the Adversary Proceeding will be dismissed with prejudice.



JAMES S. STARZYNSKI
United States Bankruptcy Judge

APPROVED AND SUBMITTED BY:
JACOBVITZ, THUMA & WALKER, P.C.

By: s/ submitted by e-mail

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APPROVED AND AGREED:
GEORGE MOORE AND ASSOCIATES

By: Approved by e-mail 12/05/03

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Attorneys for Roswell H2O

I hereby certify that on December 9, 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