

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 02-01092

THIS MATTER came before the Court on the Chapter 7 Trustee's Motion to Approve Settlement of Adversary Proceeding 02-01092 (document #2257) (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, 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. 02-01092 (the "Preference Action"), the Trustee sought to recover \$356,000 from Frito Lay of North America, a division of Pepsico, Inc. (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 \$302,000 in full satisfaction of any and all claims asserted in the Preference Action (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;

E. The parties shall execute a settlement and release agreement in the form attached hereto as

Exhibit A (the “Settlement Agreement”);

F. On November 21, 2003, notice of the Motion (docket #2259) (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;

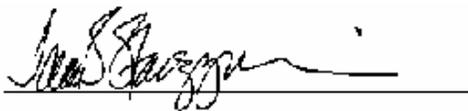
G. The Notice provided for a deadline to object to the Motion of December 15, 2003, which was 23 days after the date of mailing of the Notice. The Notice was sufficient and appropriate in the particular circumstances;

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 is approved. Preference Defendant shall pay the Trustee the Settlement Amount, the parties shall execute 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.

A handwritten signature in black ink, appearing to read 'James S. Starzynski', is written over a horizontal line.

JAMES S. STARZYNSKI
United States Bankruptcy Judge

Submitted and approved:
JACOBVITZ, THUMA & WALKER, P.C.
By: submitted by e-mail 12/24/03

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(505) 766-9272

Attorneys for the Trustee

I hereby certify that on December 30, 2003, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

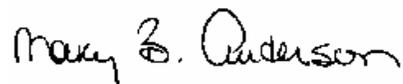
A handwritten signature in black ink that reads "Mary E. Anderson". The signature is written in a cursive style with a large, looped initial "M".

EXHIBIT A

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “Agreement”), made this ___ day of October, 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 Frito Lay North America, a Division of Pepsico, Inc. (the “Defendant”), on the other, is intended to extinguish the claims and obligations set forth below.

WHEREAS on or about May 20, 2002, the Plaintiff filed adversary proceedings against Frito Lay North America, a Division of Pepsico, Inc. captioned *Yvette J. Gonzales, Trustee v. Frito Lay North America, a Division of Pepsico, Inc.*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 02-01092 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; and

WHEREAS the Trustee represents that she currently is not aware of any claims against Frito Lay North America owned by the Furr’s Estate other than those that were brought or could have been brought in connection with the Avoidance Action.

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

1. The Plaintiff will dismiss the Avoidance Action with prejudice.
2. The Defendant will pay the Plaintiff \$302,000 in settlement of the Avoidance Action within ten days after the entry of an order by the Bankruptcy Court approving this Agreement. Defendant agrees to provide Plaintiff a check for the above amount, made out to Yvette J. Gonzales, Trustee.

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 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 officers, directors, employees, attorneys, other professionals, agents and/or any other representatives from any and all claims, demands, or actions that were made or raised in the Avoidance Action.

5. The Defendant may amend its proof of claim filed in the bankruptcy case to claim the amount paid in settlement.

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 attorney 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.

FRITO LAY NORTH AMERICA, A
DIVISION OF PEPSICO, INC.

By: _____

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