

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James Starzynski

James Burke, Law Clerk
Jill Peterson, Courtroom Deputy

Joe Jameson Court Reporters
(505) 242-2809

Sara Edmonds Truske

Date:
THURSDAY, JANUARY 15, 2004

In Re:
FURRS SUPERMARKETS, INC.
No. 7-01-10779 SA

Final Hearing on Claim for Administrative Expenses (clm #1807, am. #1928, obj. #1826, memor. opin. #2068, order denying msj #2070, order denying Xmsj #2069)

Attorney for Trustee: David Thuma
Trustee: Yvette Gonzales
Attorney for TGAAR: Robert Whitt

Summary of Proceedings:

Exhibits ___X___

Testimony ___X___

FINAL HEARING CONT'D; TESTIMONY TAKEN - COURT WILL CONTACT PARTIES TO SCHEDULE CLOSING ARGUMENT

Ct: Deal w/exhibits and seques. of witnesses. Telling me TGAAR is one entity.

T: Not sure that is true.

W: Bot TGAAR entities have filed a claim. Think they are both on the clm

Ct: Talking about am. m/for pymt of admin. exp.

W: Yes.

Ct: Doc. 1928. TGAAR Properties, Inc. and TGAAR West Properties, Inc. What you are talking about?

W: Yes.

Ct: Ea. has ownership clm. Some kind of ownership interest.

W: Yes sir.

T: News to me. Guess Mr. G. is repres. of one and Mr. Baily repres. for the other. Surprised if they had a monetary clm.

Ct: Treat both of having a clm. Make rule of sequest. witnesses.

W: They have a witness coming later, won't req. to seques. them.

Ct: Will deal w/that iss. when it comes up. Mr. B. and Mr. G. are welcome to stay and Ms. Gonzales can stay as well. Have agmt on what exh. can be admitted? Familiar w/that rule. Admit exh. as to authen. So little weight it can be disregarded.

T: Have right to argue relevance.

Ct: Start w/TGAAR's exh. 1 - 35.

W: Yes.

Ct: Trustee exh. A - I.

T: Yes.

Ct: Admitted w/o obj.

T: Like to throw out the order of witnesses. Mr. W. and I agree he will go first. He has two and I have two. Mr. Parker will be here around 11:00. Like to get him done today. Trustee has plans to be out of town tomorrow, so I need to get her done too.

W: Our flight back to Midland goes thru El Paso so bel. we are on the same flight.

T: A lot of test. is subm. by depos. Don't have them avail. to you yet. Prob. w/Federal Express. Might make more sense to do closing in writing. Might not make sense to argue today what is in those depos.

W: Fine w/me. Our exh. and our depos. trans. got lost w/Federal Express. Made two orig. depos. trans. Will subm. those to Mr. T. now if you want me to.

T: Don't need them til later.

Ct: Frequently get live evid. in first. Take addit. evid. later on. Written argum. or oral argum. by phone or come here and do it live. Get live argum. in first and cuts down on time and expense. Can do the remainder later. Will do oral argument or written argument at some later time when we have everything and have chance to read it.

OPENING STATEMENTS

W: File extens. cross msj. Bought a shopping center in Midland, Texas. 20 yr lease. Furrs purch. lease and oper. grocery store from that facil. Went on til bankr. on Feb. 2001. Got a ltr w/keys, but didn't move anything out of store. Lots of things left, cigarettes, alcohol, etc. My clients resp. to ltr and rec'd a solicit. bid. Case was conv. in Dec. and contact was made w/ch. 7 trustee. Never got back to them. Auction order was entered around April or May 2002. Auction held May 30, 2002. Bidders had to have things out in 2 - 3 days. After first day didn't show up at all and was total chaos. Have photos to prove this. Couldn't do anything w/store. Mr. Thuma wrote us a ltr telling us we could junk the rest of the stuff in store. Gave us real auth. to take possess. of the store. Over next 3 mos. our people worked on cleaning out the junk. In process of removing equip. showing it was totally unsupervised. Incredible amt of damage. Never happened to my clients. People were bidding \$10 for sinks and pulling them off wall and breaking pipes. Sawing off copper tubing. Ruining it forever. Knocking holes in walls and leaving a colossal mess.

Ct: Give brief stmt of what evid. will be.

W: Evid. shows our clients had a tremendous loss. Claiming what we really lost. Like to make a partial recovery.

T: Like all landlords involved TGAAR lost a lot of money. Furrs was a major tenant of this center. TGAAR was hurt financially. Took a long time to find new tenants. Doesn't appear to trustee that TGAAR wasn't..attempt to recoup losses. First attempt in Nov. 2001. That clm was w/drawn. Next was when TGAAR started billing. Same time offering the trustee to buy for \$5800. Trying to force trustee to sell cheap. Got in the way. Aug. 2002 TGAAR filed a m/for admin. expense. Asking for \$119k. Damage was \$15k. Filed am. clm asking for \$194k. Damage clm from \$15k to \$120k. Now at trial want you to award them \$390k in damages. Wildly inflated clm. Actual figure is zero or very close to it. First is for storage for rent. Despite fact you have ruled already that they don't get rent. Undisputed. Today they are asking you to

award them. Three subst. problems to that \$9k. You will conclude that clm may not be zero. Ought to be zero or close to zero. Will hear what could have happened. New clm in delayed damages. Rent from auction thru disposal of stored equip. Never subj. of discovery and shouldn't be considered. Learned about it yesterday. TGAAR was not damaged by delay. During summer of 2002 was negot. w/grocery store tenants. Evid. will show not til dec. 2002 that they signed up w/Goodwill for portion of space. Really wouldn't take 4 mos. to get equip. out. Take 4 days. Damage to building. They clm \$107k. When you hear evid. how do you know how much it cost. See that number is wildly inflated. Attempt by TGAAR to recoup. \$40k is for electrical and refrigeration plumbing. Two one pg. bids. Evid. is uncontradicted that it was prepared in June 2003. Contractors were on sight doing tenant build out for Goodwill. Then after fact TGAAR goes to people and says please break out damage. On depos. cross exam. these people couldn't give any back up at how they arrived at their numbers. Did dummy bids. Didn't look right to me. \$18k for wall ceilings. Person who did that work didn't have records. He admitted it was to repair greasy walls from 20 yrs. He didn't know how you could allocate that type of damage repair. Clm of \$50k to replace tile floor. Evid. will show I think that during the removal process a piece of equip. was dragged across floor and created a gouge. Evid. will - is undisputed that two parts if Goodwill and the other is Southern Career Institute. Will conclude there is no way Goodwill or anyone else will agree to lease out a new lease for 20 yrs. Think it is a zero \$ damage clm. We don't think this is a split the baby type of hrg. Award ought to be zero or close to it.

W: Call Mr. Glascock.

TESTIMONY OF GARY GLASCOCK (sworn)

VOIR DIRE BY DAVID THUMA

Recess

TEST. CONT'D

CROSS EXAMINATION

Recess

CROSS CONT'D

REDIRECT

Recess

TESTIMONY OF WALTER PARKER (sworn)

CROSS EXAMINATION

REDIRECT

TESTIMONY OF GARY BAILY (sworn)

CROSS EXAMINATION

REDIRECT

RE CROSS

SECOND REDIRECT

TESTIMONY OF YVETTE GONZALES (sworn)

CROSS EXAMINATION

REDIRECT

RE CROSS

W: We rest.

T: Need to submit the transcript depositions to you.

Ct: I forgot about that. Will get you on the phone w/connection to making further arrangements.