

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 PROCEEDING 02-01100 S

Yvette G. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, pursuant to F. R. Bankr. P. 9019, moves the Court to approve the settlement of adversary proceeding No. 02-01100 S, captioned *Yvette J. Gonzales, Trustee v. Rogers Transportation Service* (the "Preference Action"), against the named defendant ("Preference Defendant"), and in support hereof states:

1. Commencement and Conversion of Case. 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, this Court entered an order converting the chapter 11 case to a case under chapter 7. On that date the Trustee was appointed as the trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

2. 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.

3. The Preference Action. In the Preference Action, the Trustee sought to recover \$288,003.58 from the Preference Defendant, plus all other amounts, if any, recoverable under 11 U.S.C § 547.

4. The Settlement of the Preference Action. Pre-trial discovery revealed that the net preference claim was \$44,369.26 (the "Net Preference Claim"). Preference Defendant

and the Trustee have agreed that Preference Defendant will pay the Trustee \$37,713.87 (the “Settlement Amount”), without interest, in 30 equal monthly installments of \$1,257.13. The first installment shall be due April 1, 2004 and the remaining 29 installments shall be due on the first day of each month thereafter. Following entry of an order granting this Motion and approving the Settlement Amount, and following payment in full of the Settlement Amount with no default, the Trustee will dismiss the Preference Action with prejudice. To memorialize the settlement, the parties shall execute a Settlement and Release Agreement in the form attached hereto as Exhibit A.

5. Default. If Preference Defendant defaults in any required payment and does not cure the default within 10 days after receiving written notice of the default, then the Net Preference Claim, less any amounts already paid pursuant to paragraph 4 above (the “Judgment Amount”), shall become immediately due and payable. Upon the Trustee filing an affidavit of default with the Bankruptcy Court, the Bankruptcy Court shall enter a final judgment for the Judgment Amount in the Preference Action, and the Trustee may take any lawful action to enforce and collect the Judgment Amount.

6. Best Interests. The Preference Settlement is fair and equitable, and is in the best interests of and beneficial to the Debtor’s estate and the creditors.

WHEREFORE, the Trustee requests that the Court grant this Motion, approve the settlement outlined above, and grant all other just and proper relief.

JACOBVITZ, THUMA & WALKER
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This certifies that a copy of the
foregoing was served by mail on:

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This 3rd day of March, 2004.

Filed electronically
David T. Thuma