

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 03-1031 S**

THIS MATTER came before the Court on the Chapter 7 Trustee's Motion to Approve Settlement of Adversary Proceeding 03-1031 (doc. #2356) (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 (the "Trustee"), 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. 03-1031 (the "Preference Adversary Proceeding"), the Trustee sought to recover \$35,136.18 from Miracle Candle Company. (the Preference Defendant), plus all other amounts, if any, recoverable pursuant to 11 U.S.C. § 547.

D. Preference Defendant and the Trustee have agreed that Preference Defendant will pay the Trustee \$15,000 (the

"Settlement Amount"), without interest, in 12 equal monthly installments of \$1,250. The first installment shall be due April 1, 2004 and the remaining 11 installments shall be due on the first day of each month thereafter. Settlement is based primarily on the fact that during the preference period the Preference Defendant paid the Debtor \$50,000 as part of the Debtor's execution of a new supply agreement. The Preference Defendant took the position that it was entitled to treat the payment as subsequent new value under 11 U.S.C. ¶547(c)(4). 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. Following entry of this Order and payment in full of the Settlement Amount with no default, the Trustee will dismiss the Preference Action with prejudice. Miracle Candle Company may file a proof of claim in the Debtor's bankruptcy case for the amounts it pays in settlement. To memorialize the settlement, the parties shall execute a Settlement and Release Agreement in the form attached to the Motion as Exhibit A (the "Settlement Agreement").

E. The Settlement Amount is fair and equitable, and is in the best interests of and beneficial to the Debtor's estate and the creditors. The terms of the Settlement Agreement are fair and reasonable.

F. On March 25, 2004, notice of the Motion (docket #2360) (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;

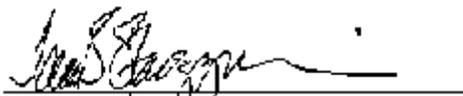
G. The Notice provided for a deadline to object to the Motion of April 16, 2004, which was 23 days after the date of mailing of the Notice. The Notice was sufficient and appropriate in the particular circumstances;

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, and the parties shall execute and perform under the Settlement Agreement.

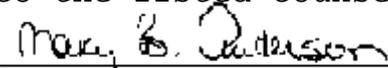


JAMES S. STARZYNSKI  
United States Bankruptcy Judge

Submitted and Approved:  
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Attorneys for the Trustee

I hereby certify that on April 26, 2004, 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