

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,
a Delaware corporation,

Case No. 7-01-10779
Chapter 7

Debtor.

**MOTION FOR RULE 2004 EXAMINATION OF REPRESENTATIVES OF
GARDERE & WYNNE, L.L.P., INCLUDING PAUL LESLIE**

Yvette J. Gonzales, the Chapter 7 trustee of the above-captioned bankruptcy estate (the "Trustee"), through counsel, respectfully moves the Court pursuant to Rule 2004 of the Bankruptcy Rules of Procedure, for an order authorizing her to examine Gardere & Wynne, L.L.P ("Gardere"), including Paul Leslie ("Leslie") of Gardere, and upon service of Gardere with a subpoena, (i) requiring Gardere to designate person(s) having knowledge of the matters described on Exhibit A; (ii) requiring such persons designated by Gardere, and Leslie, to appear to be examined under oath; and (iii) requiring Leslie to bring with him to the Rule 2004 examination, or to produce in advance of the examination, the documents, or copies thereof, that are in Gardere's possession, custody or control that are listed on the attached Exhibit B.

As grounds for and in support of this Motion, the Trustee states:

1. On or about August 26, 1993, an Asset Purchase Agreement ("APA") was made between Debtor and Newsom's Food Center Inc. Pursuant to the APA, Debtor sold certain assets to Newsom's Food Center Inc., and provided seller financing of part of the purchase price.

2. On information and belief, the purchase and sale under the APA closed on or about September 1, 1993, at which time Newsom's Food Center Inc. executed a note in favor of Debtor in the amount of \$924,414 (the "Note"), guaranteed by Don Newsom and Mardon Investments, Inc.

3. On information and belief, on or about October 19, 1993, a Don Newsom owned entity purchased a \$500,000 life insurance policy on Don Newsom issued by Transamerica.

4. On information and belief, on or about October 25, 1993, the life insurance policy was pledged to Debtor by an Assignment of Policy as Collateral Security, and notice of such collateral assignment subsequently was given to Transamerica. .

5. On information and belief, the owner of the life insurance policy subsequently transferred the policy to Don Newsom's sons, and Don Newsom later died.

6. Don Newsom's sons claim the \$500,000 death benefit under life insurance policy, and assert the collateral assignment of the policy to the Debtor was invalid. Transamerica will not pay the \$500,000 to Don Newsom's sons without the consent of the Trustee or a court order, in view of the collateral assignment of the policy to the Debtor. The Trustee requires discovery to assist her in determining whether she has a good claim to the insurance funds.

7. The Gardere law firm represented the Debtor, pre-petition, in connection with the APA and related transactions; and on information and belief represented the Debtor pre-petition, in connection with an attempted restructuring of the obligations under the Note and litigation to collect under the Note.

8. The Trustee wishes to examine representatives of Gardere, including Leslie, because Leslie, and possibly other employees of Gardere, have knowledge of the transactions described above, and have custody or control of records regarding those transactions. Efforts to obtain the requested information from Gardere without formal discovery have been unsuccessful.

9. The examination would take place at a time and location ordered by the Court.

10. Specifically, the Trustee requests that this Court enter an order, upon service of Gardere with a subpoena, (i) requiring Gardere to designate person(s) having knowledge of the matters described on Exhibit A, (ii) requiring such persons designated by Gardere, and Leslie, to appear to be examined under oath, and (iii) requiring Leslie to bring with him to the Rule 2004 examination, or to produce in advance of the examination, the documents, or copies thereof, that are in Gardere's possession, custody or control that are listed on the attached Exhibit B.

11. Paul Leslie has been contacted, has agreed to provide the requested information without the necessity of a Rule 2004 examination, but has not done so.

WHEREFORE, the Trustee moves this Court for the relief requested above, and such other relief as appropriate.

JACOBVITZ, THUMA & WALKER, P.C.

By: s/filed electronically
Robert H. Jacobvitz
Stephanie L. Schaeffer
500 Marquette, N.W., Suite 650
Albuquerque, NM 87102
(505) 766-9272/(505) 766-9287 fax
Attorneys for the Trustee

This certifies that a copy of the foregoing was served by first class United States mail to:

Paul S. Leslie
Gardere Wynne Sewell LLP
Thanksgiving Tower
1601 Elm Street, Suite 3000
Dallas, TX 75201

Robert E. Reetz, Jr.
Brown McCarroll, L.L.P.
98 San Jacinto Blvd, Suite 1300
Austin, Texas 78701

Ron Andazola
U. S. Trustee
PO Box 608
Albuquerque, NM 87103

this 10th day of May, 2004

s/filed electronically
Robert H. Jacobvitz