UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
12:00 MIDNIGHT
SEP 0 3 2004
DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

In re:

FURR'S SUPERMARKETS, INC.,

Debtor,

Case No. 7-01-10779-SA
Chapter 7

BUNZL DISTRIBUTION, INC.'S APPLICATION FOR ALLOWANCE AND PAYMENT OF RECLAMATION CLAIM OR ADMINISTRATIVE PRIORITY EXPENSE CLAIM

COMES NOW Bunzl Distribution, Inc. (hereinafter "Bunzl"), by and through counsel as undersigned, and files its Application for Allowance and Payment of Administrative Priority Expense. In support thereof, Bunzl states as follows:

1. Furr's Supermarket, Inc. ("Debtor") filed a voluntary Chapter 11 Bankruptcy case on February 8, 2001.

2. On December 19, 2001, the Chapter 11 case was converted to a Chapter 7 case, and Yvette Gonzales was duly appointed as Chapter 7 Trustee. Ms. Gonzales remains the Chapter 7 Trustee in this case.

3. This Motion is filed pursuant to 11 U.S.C. §§ 503, 507(b) and 546(c). This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (B). Venue is proper pursuant to 11 U.S.C. § 1409. This Application is filed pursuant to Rules 3001(f), 3007 and 9014 Fed.R.Bankr.P.

4. Bunzl sold goods (generally paper products) to the Debtor prior to the bankruptcy case. The goods were not sold to Furr's as inventory for resale. The goods were delivered to Furr's for use in the operation of its business, the cost of these goods was for actual, necessary costs and expenses of preserving the estate. Without such goods, Furr's could not operate.

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5. Bunzl sold goods to the Debtor in the ordinary course of its business prior to the filing of the Chapter 11 Bankruptcy.

6. Bunzl made a demand in writing for the reclamation of goods it delivered to Debtor within the statutory reclamation period. Such written demand was timely made pursuant to 11 U.S.C. §§ 546(c)(1)(A) and (B).

7. Bunzl thereafter complied with the provisions in this Court's Order Establishing Procedure for Reclamation Claims, entered herein on August 22, 2001 (hereinafter the "Reclamation Order").

8. Pursuant to the Reclamation Order, Furr's was to prepare and deliver to the reclamation claimants, including Bunzl, a Reclamation Report within 75 days of August 22, 2001.

9. Bunzl never received a Reclamation Report from Furr's.

10. Upon belief, and upon information from the Trustee's counsel (Debtor's former Chapter 11 counsel), no Reclamation Report was ever drafted by the Debtor or Trustee; nor was any such report ever delivered to such claimants.

11. Bunzl complied with state law, the Bankruptcy Code, and this Court's Order in making its claim for reclamation of goods. The Debtor and Trustee have not.

12. Upon information and belief, the goods which Bunzl sought to reclaim were used by the Chapter 11 Debtor to operate, and/or were transferred to the purchaser of the grocery stores, or were otherwise disposed of, without Bunzl's consent or knowledge.

13. Furrs, the Chapter 11 Debtor/Debtor-in-Possession, wholly failed to comply with applicable state and bankruptcy reclamation law.

14. Pursuant to 11 U.S.C. § 546(c)(2), the Court may only deny reclamation to a seller with a right of reclamation if it grants the seller's claim priority under 11 U.S.C. § 503(b) or secures the seller's claim by a lien.

15. Bunzl's reclamation claims were timely filed for goods valued at $136,000.00.

16. Because the Debtor has, upon information and belief, disposed of Bunzl's goods, Bunzl is entitled, pursuant to 11 U.S.C. § 546(c)(2), a priority claim under § 503(b), or to a lien on property of the estate in the amount of $136,000.00.

17. Bunzl complied with the Bankruptcy Court's Reclamation Order but the Debtor wholly failed to comply with the Court's Order.

18. Bunzl's property, which it was entitled to reclaim, was used, upon information and belief, for the actual and necessary expenses of preserving the Chapter 11 estate.

19. The estate should be barred from asserting any affirmative defenses to Bunzl's Reclamation Claim, and Bunzl's Petition for Allowance and Payment of Administrative Priority Expense because the Debtor, and thereafter the Trustee, failed to follow the requirements of the Bankruptcy Code and this Court's August 22, 2001 Order, and therefore should be deemed to have forfeited and waived any defenses.

WHEREFORE Bunzl Distribution, Inc. respectfully requests the Court to enter an Order allowing Bunzl's Administrative Priority Claim in the amount of $136,000.00, plus interest and reasonable attorney fees, and directing the Chapter 7 Trustee to pay same; in the alternative, Bunzl respectfully requests the Court to grant it a priority lien in the amount of $136,000.00 plus interest

and reasonable attorney fees on property of the estate; and for other and further relief as this Court deems just and appropriate.

Respectfully submitted,

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