

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

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

Case No. 7-01-10779 SA  
Chapter 7

Debtor.

**TRUSTEE'S OBJECTION TO BUNZL DISTRIBUTION INC.'S APPLICATION  
FOR ALLOWANCE AND PAYMENT OF RECLAMATION CLAIM OR  
ADMINISTRATIVE PRIORITY EXPENSE CLAIM**

Yvette J. Gonzales, the Chapter 7 trustee (the "Trustee"), objects to Bunzl Distribution Inc.'s ("Bunzl's") Application for Allowance and Payment of Reclamation Claim or Administrative Priority Expense Claim (the "Motion"), filed September 3, 2004, as follows:

1. No Reclamation Claim is entitled to an Administrative Claim. Bunzl is not entitled to allowance of any administrative claim under 11 U.S.C. §503(b), §507, or §546(c), or otherwise, on account of or relating to any goods it delivered to the Debtor pre-petition, including the goods for which it asserts a reclamation claim. Alternatively, Bunzl should be allowed such an administrative claim in the amount of \$0.00. On the chapter 11 petition date, all Furr's Supermarkets, Inc.'s (the "Debtor's") inventory of the Debtor was fully encumbered by security interests and other liens. *See* [the Court's Order Approving DIP loan, docket # 241]. These liens had priority over any and all reclamation claims, including Bunzl's reclamation claim. *Id.* Because there was no value in the Debtor's inventory for reclamation claimants, no reclamation claimant in this bankruptcy case, including Bunzl, is entitled to allowance of an administrative claim on account of its reclamation claim.

2. The Threshold Issue Should be Determined for All Reclamation Claimants at the Same Time. The threshold issue of whether Bunzl (or any other reclamation claimant) is entitled to an administrative claim for the reasons set forth above should be determined before the Court should consider any issues relating the amount of the reclamation claims. Further, such threshold issue should not be determined based on Bunzl's Motion alone, but as part of a procedure to determine the threshold issue at the same time for all reclamation claimants. Otherwise, if the Court were to rule for the Trustee on the issue, the other reclamation claimants may as a practicable matter be deprived of a meaningful opportunity to be heard on the issue.

3. The Reclamation Procedures Order Excludes the Threshold Issue. The Order Establishing Procedure for Resolving Reclamation Claims (the "Procedures Order"), to which Bunzl refers in its Motion, specifically excludes from the order, and reserves for later and separate determination, the threshold issue of whether Bunzl, and other reclamation claimants, are entitled to any administrative claim for the reasons set forth above.

4. Bunzl's §503(b) Claim Fails. In addition, Bunzl is not otherwise entitled under 11 U.S.C. §503(b) to allowance of an administrative claim on account of goods it delivered to Debtor pre-petition because the goods were delivered pre, not post, petition.

5. Objection to the Amount of the Claim. In addition, and without waiver of the Trustee's objection to allowing Bunzl any administrative claim, the Trustee objects to the amount of Bunzl's alleged administrative claim to the extent the goods in question were not delivered within the reclamation period. The Trustee denies that she is barred by the Procedures Order from litigating the claim.

6. Objection to Any Chapter 7 Claim. Bunzl should not be allowed a chapter 7 administrative claim. Bunzl has not alleged any grounds that would entitle it to a chapter 7 administrative claim.

7. Objection to Payment of Any Chapter 11 Claim at this Time. No chapter 11 administrative claims should be paid at this time, including Bunzl's alleged administrative claim. Allowed chapter 11 administrative claims should be paid only after each claimant's pro rata share of funds available to pay allowed administrative claims is determined.

8. Objection to Interest and Attorney Fees. The Trustee objects to Bunzl's request for any interest or attorney fees on the alleged reclamation claim. There is no provision in the bankruptcy Code for the payment of interest or attorney fees on such a claim.

WHEREFORE, the Trustee requests the Court to deny the Motion, and for all other appropriate relief.

JACOBVITZ THUMA & WALKER P.C.

By: s/filed electronically \_\_\_\_\_  
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This certifies that a copy of  
the foregoing was served by  
U.S. mail on

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this 21<sup>st</sup> day of September 2004.

By: s/filed electronically  
Robert H. Jacobvitz