

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 03-1061 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. 03-1061 S, captioned *Yvette J. Gonzales, Trustee v. Dantex Construction Company*. (the "Preference Action"), against the named defendant (the "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 \$150,000 from the Preference Defendant, plus all other amounts, if any, recoverable under 11 U.S.C § 547.

4. The Settlement of the Preference Action. Preference Defendant has offered to pay the Trustee \$118,000 in full satisfaction of any and all claims asserted in the

Adversary Action (the “Preference Settlement”). In consideration of the Preference Settlement, upon the entry of a final non-appealable order granting this Motion and approving the Preference Settlement, the Preference Action would be dismissed with prejudice and the Trustee would release any and all estate claims against Preference Defendant under 11 U.S.C. §547. The parties would execute a settlement and release agreement in the form attached hereto as Exhibit A.

5. 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 enter an order approving the Preference Settlement and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER  
a Professional Corporation

By: s/filed electronically  
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This certifies that a copy of the foregoing was served by mail on:

Ronald E. Andazola  
P.O. Box 608  
Albuquerque, New Mexico 87103

this 22<sup>nd</sup> day of September, 2004.

Filed electronically  
David T. Thuma