

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

IN RE:)
)
FURR'S SUPERMARKETS, INC.) Case No. 11-01-10779-SA
a Delaware Corporation,)
)
Debtor.)
)

**DESERT EAGLE'S OBJECTION TO DEBTOR'S
MOTION FOR ORDER APPROVING SALE OF SOME OR ALL OF
DEBTOR'S OPERATING ASSETS**

TO THE HONORABLE JAMES C. STARZYNSKI, CHIEF UNITED STATES BANKRUPTCY JUDGE:

DESERT EAGLE DISTRIBUTING COMPANY OF NEW MEXICO, L.L.C. ("Desert Eagle"), a secured creditor and party-in-interest in this case, objects to Debtor's Motion for Order Approving Sale of Some Or All of Debtor's Operating Assets, on the following grounds:

1. Debtor proposes to auction all (or some) of its operating assets in what is essentially a liquidating sale. Debtor is soliciting bids on a store-by-store basis. Bidders may bid on one or more stores. There is no proposal or requirement for bidders to allocate bids among particular assets of each store, such as inventory, equipment, leases, or liquor licenses. Debtor has provided no information regarding the various competing liens and interests in relation to each store and the assets of each store. Debtor has not disclosed its "going forward" intentions or plans in the event that only some of the stores are sold.

2. Debtor's proposal amounts to a *sub rosa* plan which circumvents all of the requirements for proposing and confirming a plan of reorganization in a Chapter 11 proceeding, such as this.

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3. Desert Eagle holds valid, duly-perfected, super-priority, statutory liens upon certain New Mexico liquor licenses issued to the Debtor. Such liquor licenses may not be transferred or sold unless Debtor first pays Desert Eagle or makes satisfactory arrangements with Desert Eagle. § 60-6B-3 NMSA 1978. Debtor has not paid Desert Eagle. Nor has Debtor made satisfactory arrangements with Desert Eagle.

4. Desert Eagle reasonably anticipates that Debtor's proposal will lead to further litigation regarding asset allocations thus compromising Desert Eagle's lien position, in that post-sale litigation over asset allocations will undoubtedly increase Desert Eagle's expenses and erode the value of Desert Eagle's liquor license liens, which is antithetical to the protections promulgated in § 60-6B-3 NMSA 1978 and 11 U.S.C. § 363(f).

5. Desert Eagle reasonably anticipates that the proposed sale will result in *de facto* lien-stripping by Debtor, leaving Desert Eagle without the value or benefit of its liens and without identifiable proceeds from the sale of its collateral, jeopardizing Desert Eagle's liens and collateral, and leaving Desert Eagle without adequate recourse against Debtor or the collateral.

6. Debtor's assets may not be sold in a manner which jeopardizes or potentially jeopardizes Desert Eagle's liens or collateral. 11 U.S.C. § 363(f); § 60-6B-3 NMSA 1978.

FOR THESE REASONS, Desert Eagle respectfully prays that the Court will deny the Debtor's Motion for Order Approving Sale of Some or All of Debtor's operating assets. Desert Eagle respectfully prays for such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was mailed to the persons on the attached matrix on this 19th day June, 2001

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