

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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J.S. BANKRUPTCY COURT
ALBUQUERQUE N.M.

IN RE:

FURR'S SUPERMARKETS, INC.,
(E.I.D. 75-2364418).

Debtor.

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Chapter 11

Case No. 11-01-10779-SA

LIMITED OBJECTION OF SUNWEST PROPERTIES N.C., INC. TO DEBTOR'S MOTION FOR ORDER APPROVING SALE OF SOME OR ALL OF DEBTOR'S OPERATING ASSETS AND GRANTING RELATED RELIEF

SunWest Properties N.C., Inc. ("SunWest"), a creditor and party in interest in the above styled and numbered bankruptcy case, hereby files this its Limited Objection to Debtor's Motion for Order Approving Sale of Some or All of Debtor's Operating Assets and Granting Related Relief, and would respectfully show as follows:

I.

BACKGROUND

1. Debtor filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on or about February 8, 2001. Debtor continues in possession of its property and operation of its business as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. On or about June 1, 2001, Debtor filed its Motion for Order Approving Sale of Some or All of Debtor's Operating Assets and Granting Related Relief (the "Sale Motion"). Pursuant to the Sale Motion, Debtor seeks, among other relief, an order: (a) determining that the defaults set forth in the Sale Motion are the only defaults under the Debtor's executory contracts and unexpired leases that must be cured as a condition to assumption and assignment; and (b) determining that upon

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the assumption and assignment of such contracts and leases the Debtor shall be released from all obligations under such agreements.

3. SunWest is the lessor of Debtor under an unexpired lease of non-residential real property (the "Lease") designated as Location No. 993 in Exhibit "2" to the Sale Motion. The Lease covers certain premises located at 1201 S. Stockton Street, Monahans, Texas (the "Premises").

4. Pursuant to the terms of the Lease, Debtor is obligated not only to pay base rent, but also to pay as additional rent all property taxes and assessments attributable to the Premises during the term of the Lease. Such payment is made in the form of a reimbursement to SunWest following submission of paid tax receipts. The Sale Motion correctly lists the base rent cure amount as \$4,789.42, and the unpaid property taxes for the year 2000 at \$23,368.43. *However, the Sale Motion fails to include the payment of accrued but not yet payable property taxes for the year 2001.*

5. For the reasons more fully set forth below, SunWest objects to the Sale Motion unless the relief requested herein is granted.

II.

LIMITED OBJECTION

6. Assignment of an executory contract or unexpired lease assumed under Section 365 relieves the Debtor and the estate from any liability for any breach of such contract or lease occurring *after* the assignment. Given that the Sale Motion seeks an order determining that the defaults set forth therein are the only defaults that must be cured as a condition to assumption and assignment, and further requests that upon such assumption and assignment the Debtor be released from any further obligations under the Lease, SunWest objects to the Sale Motion unless either the Debtor is required to pay, or the proposed assignee is expressly obligated to pay, SunWest for all property

taxes and assessments attributable to the Premises for the entire year 2001, and not simply the pro rata share of taxes attributable to the period of time after the effective date of the assignment and assumption.

III.

RELIEF REQUESTED

7. Pursuant to Section 365(b)(1), SunWest requests that the Court condition the assumption and assignment of the Lease such that either:

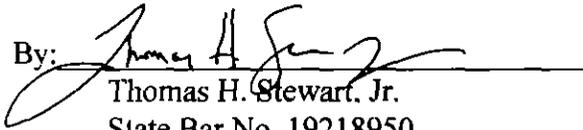
a. The Debtor or the estate be required to pay to SunWest the estimated pro rata share of real property taxes and assessments attributable to the Premises for the period of time from January 1, 2001 through the effective date of the assignment and assumption contemporaneously with the cure of the other defaults acknowledged in the Sale Motion; or

b. The assignee of the Lease expressly acknowledges and agrees to reimburse SunWest for all real property taxes and assessments attributable to the Premises from and after January 1, 2001 and throughout the remaining term of the Lease.

WHEREFORE, SunWest respectfully requests that the Court expressly condition the approval of any proposed assumption and assignment of the Lease in accordance with the relief requested herein, and for such other relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted.

LAMBERTH & STEWART, P.L.L.C.

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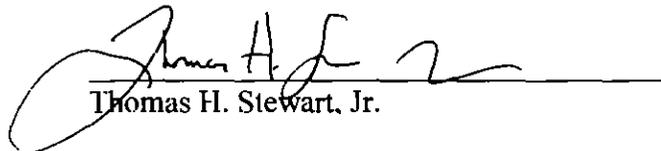
CERTIFICATE OF SERVICE

20th I hereby certify that a true and correct copy of the foregoing pleading has been sent on the day of June, 2001, to those parties listed below by overnight mail.

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