

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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

IN RE:  
FURR'S SUPERMARKETS, INC.

§  
§  
§

CASE NO. 11-01-10779-MSA

Debtor.

**MOTION AND NOTICE OF MRS. BAIRD'S BAKERIES BUSINESS TRUST FOR  
ORDER ALLOWING AND REQUIRING PAYMENT OF ADMINISTRATIVE  
EXPENSES; MEMORANDUM OF AUTHORITIES**

**TO: ALL PARTIES IN INTEREST AND THEIR COUNSEL:**

**PLEASE TAKE NOTICE** pursuant to LBR 9013-1(c) that after 20 days plus three mailing days, Mrs. Baird's Bakeries Business Trust will move for an order (1) allowing administrative expenses pursuant to 11 U.S.C. 503(b)(1) for the actual, necessary costs and expenses of preserving the estate rendered after the commencement of the case. These administrative expenses are for bread and other food items furnished to various stores of the Debtor after the filing of this case. The amount of the post petition account is \$31,919.62. This motion is based on this Motion and the Memorandum and Declarations of Kelly Brown filed and served herewith, the pleadings and documents on file in this matter and such further pleadings and documents as creditor have filed, together with such argument and evidence as may be heard at the time of hearing on this motion. Pursuant to LBR 9013-1(c)(1) if no objection is timely filed with the clerk and served upon the movant, the court may enter an order granting the relief without a hearing.

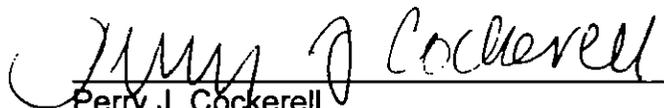
WHEREFORE, pursuant to 11 U.S.C. Section 503 of the Bankruptcy Code Mrs. Baird's Bakeries Business Trust request the Court to Order the Debtor to make an

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immediate payment of the sum \$31,919.62 in fees to the creditor. Movant further requests the payment of legal fees and expenses in connection with this matter.

Dated: October 30, 2001

Respectfully submitted,

  
Perry J. Cockerell  
State Bar No. 04462500

CANTEY & HANGER, L.L.P.  
2100 Burnett Plaza  
Fort Worth, Texas 76102  
(817) 877-2886  
(817) 877-2807

ATTORNEY FOR MRS. BAIRD'S BAKERIES  
BUSINESS TRUST

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was mailed via certified mail return receipt requested on this the 30th day of October, 2001 to the following list attached as Exhibit A.

  
Perry J. Cockerell

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FURP'S SUPERMARKETS INC.

§  
§  
§

CASE NO. 11-01 1373

Debtor:

**DECLARATION OF KELLY BROWN IN SUPPORT OF  
MOTION FOR ADMINISTRATIVE EXPENSE**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

IN RE:  
FURR'S SUPERMARKETS, INC.                    §                    CASE NO. 11-01-10779-SA  
Debtor.                                            §  
                                                          §

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**MEMORANDUM OF AUTHORITIES**

**TO: ALL PARTIES IN INTEREST AND THEIR COUNSEL:**

I.

**FACTS**

Mrs. Baird's Bakeries Business Trust is a creditor of this estate having furnished the Debtor with bread and other merchandise following the filing of the case. The Debtor and secured creditors benefited from the creditor's services after the case was filed. It is undisputed that all services were rendered after the filing of the bankruptcy case. The creditor has dealt with the Debtor during the course of this case and has asked for payment of its expenses. No payment has been made to date.

II.

**LAW**

Bankruptcy courts have allowed the interim payment of "ordinary course of business" administrative expenses. The following was stated in 4 *Collier on Bankruptcy* §503.03[4] at 503-15 (15<sup>th</sup> ed):

While the courts deal gingerly with the payment of professionals, "ordinary course of business" administrative expenses, (such as current post-petition wages and trade debt) generally are paid when due. While the Bankruptcy Code certainly does not mandate this practice, there is statutory and practical support for it. Trade debt incurred in the ordinary course of business is granted administrative

expense status pursuant to Code Sections 364(a) and 503(b)(1). Because Section 364(a) permits a Trustee to incur debt in the ordinary course of business, that section may be viewed as expanding the strict and technical demands imposed by Section 503 for allowance of administrative expenses, or alternatively, it may be viewed as a legislative determination that ordinary trade debt is protectively an actual and necessary cost of preserving the estate under Section 503(b)(1).

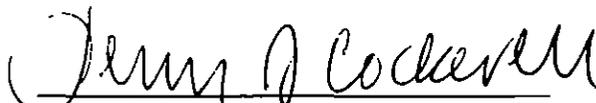
*See In Re: Georgia Steel Company, Inc.* 19 B.R. 834 (Bankr. N.D.Ga.), *In Re: Bulmer*, 95 B.R. 143 (B.A.P. 9<sup>th</sup> Cir. 1988); *In Re: Pacesetter Designs, Inc.*, 23 C.B.C.2d 211, 114 B.R. 731 (Bankr. D. Colo. 1990), 4 *Collier on Bankruptcy* § 503.034 at 503.15 (2001).

The claim on Mrs. Baird's Bakeries Business Trust should be allowed as an administrative expense and should be paid from the Debtor's estate. The Court may enter such relief if no objection is made after proper notice.

WHEREFORE, the Court should enter an order ordering the Debtor to make payment to Mrs. Baird's Bakeries Business Trust.

Dated: October 30, 2001

Respectfully submitted,



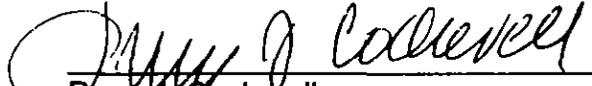
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ATTORNEY FOR MRS. BAIRD'S BAKERIES  
BUSINESS TRUST

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was mailed via certified mail return receipt requested on this the 30<sup>th</sup> day of October, 2001 to the following list attached as Exhibit A.

  
Perry J. Gockerell

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