

FILED
12:00 MIDNIGHT

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

AUG 23 2001

DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

In re:

FURR'S SUPERMARKETS, INC.,

No. 11-01-10779-SA

Debtor,

BRIEF OF FURR'S 1, 2, 6 and 8 LLCs
IN SUPPORT OF AN AWARD OF ATTORNEYS FEES

COME NOW Furr's 1 LLC, Furr's 2 LLC, Furr's 6 LLC and Furr's 8 LLC, (collectively, "the Objectors"), by and through their attorneys of record, FAIRFIELD, FARROW, FLOWERS, & STROTZ, P.C. (John E. Farrow) and hereby submits this Brief in support of their claim for an award of attorneys fees, and as grounds would show the Court as follows:

1. The Debtor filed a voluntary petition for relief herein on February 8, 2001.

2. At the time of the filing of the petition, the Debtor operated grocery supermarket stores on real property leased in the ordinary course of the Debtor's business from the Objectors (collectively, "the Stores").

3. The Objectors are each Lessors under separate unexpired leases of non-residential real property (collectively, "the Leases") more particularly described as follows:

Lessor	Store Number	Location
Furr's 1	876	4801 Louisiana NE, Albuquerque, NM
Furr's 2	875	5850 Eubank NE, Albuquerque, NM
Furr's 6	934	3518 Montana, El Paso, TX
Furr's 8	937	9480 Viscount, El Paso, TX

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4. By Order entered July 3, 2001, the Court approved an Asset Purchase Agreement between the Debtor and Fleming Companies, Inc. ("Fleming"). Pursuant to the transaction with Fleming, Objectors have been notified that the above Stores and Leases have been proposed to be transferred to third-party purchasers.

5. The Debtor has issued its Notice of Proposed Cure Amounts for the above Stores which amounts did not include payment of any amount for attorneys fees incurred by the Objectors.

6. The Bankruptcy Code provides, in §365(b)(1), that following a default in an executory contract or unexpired lease, said contract or lease may not be assumed unless, at the time of assumption, the trustee (or in this case, the Debtor) both cures the default or provides adequate assurances that the default will be promptly be cured, and provides compensation for any actual pecuniary loss suffered by a party as a result of the default.

7. As a result of the Debtor's defaults under the Leases, the Objectors have been caused to suffer actual pecuniary loss in being required to retain the undersigned to represent them in these proceedings.

8. Each of the Leases contain similar provisions for the payment of attorneys fees that read as follows:

Article XIX. Attorney's Fees.

If Lessor or Lessee files a suit against the other which is in any way connected with this Lease, the unsuccessful party shall pay the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

9. Under the Leases, the filing of a "suit . . . in any way connected with this Lease" is the operative phrase. Such suit need not be prosecuted to judgment.

10. Here, the Debtor's filing of the voluntary petition on February 8, 2001, constitutes the filing of a "suit" as that term is used in the Leases.

11. The term "suit" is of generic and comprehensive significance and applies to any proceeding against another in a court of competent jurisdiction and in which one party seeks redress or otherwise pursues the enforcement of a right. *Black's Law Dictionary* (4th Ed.). Its use is sometimes restricted to proceedings in equity, as distinguished to actions at law. *Patterson v. Standard Accident Ins. Co.*, 144 N.W. 491 (Mich. 1913).

12. Bankruptcy constitutes a branch of equity jurisprudence. *In re Flour Mills of America*, 27 F.Supp. 599 (D.Mo. 1939).

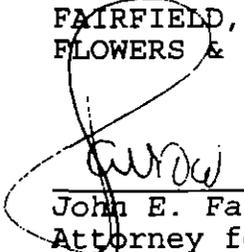
13. But for the filing of the petition herein, Objectors would not have incurred either costs or attorneys fees connected with the Leases, which costs and attorneys fees amount to actual pecuniary losses with respect to the Leases.

14. Bankruptcy courts have consistently allowed Lessors to recover their reasonable attorneys fees where the underlying lease agreement or contract provided for their recovery. *In re Bullock*, 17 B.R. 438 (BAP 9th Cir. 1982) (The purpose of §365(b)(1)(B) is to indemnify the other party . . . against loss. The purpose of an attorney's fee clause in a lease . . . is to indemnify the lessor . . . against legal expenses incurred by reason of the other

party's default.)

WHEREFORE, the Objectors pray that this Court for an Order requiring the Debtor to pay their reasonable attorneys fees incurred herein in enforcing their rights under the Leases as part of the proposed cure amounts and for such other and further relief as the Court may deem just and proper.

FAIRFIELD, FARROW,
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I HEREBY CERTIFY that a true copy of the foregoing pleading was mailed to the following counsel this 23rd day of August, 2001:

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