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Objection Deadline: July 6, 2001

FILED
2001 JUL -6 AM 11:05
U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

Michael J. Venditto (N.Y. Bar No. MV 6715)
Ira R. Abel (N.Y. Bar No. IA 1869)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

----- X		
	:	Chapter 11
In re	:	Case Nos. 11-01-10779-SA
FURR'S SUPERMARKETS, INC.,	:	
	:	
Debtor.	:	
----- X		

**LIMITED OBJECTION OF COMDISCO, INC. TO
PROPOSED REJECTION OF REAL ESTATE LEASES,
SUBLEASES, AND EQUIPMENT LEASES**

Comdisco, Inc. ("Comdisco"), a pre-petition and administrative creditor of the above captioned Debtor and Debtor-In-Possession (the "Debtor"), hereby states as follows:

SUMMARY OF RELIEF REQUESTED

1. By notice (the "Notice") dated June 25, 2001, the Debtor gave notice that it would, among other things, reject the portion of Comdisco's multi-store equipment lease (as defined more specifically below, the "Lease") only with respect to personal property located at certain Closed Stores¹.

2. Comdisco objects to the relief sought by the Debtor to the extent that the Debtor seeks to reject the Lease without full compliance with 11 U.S.C. § 365. In essence, the Debtor is seeking

¹ As defined in the Notice and the accompanying motion (the "Motion"), the Closed Stores are: location 871, 8100 Venture NE, Albuquerque, NM; location 903, 810 East 21st Street, Clovis, NM; location 944, 115 Americas Ave. S, El Paso, TX; location 946, 6910 N. Mesa Dr. El Paso, TX; and location 951, 10765 Kenworthy, El Paso, TX.

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the partial rejection of Comdisco's Lease, which is not permitted under the Bankruptcy Code. Comdisco also objects to the Debtor's failure to provide Comdisco with relief from the automatic stay or contact information with respect to recovery of its Equipment (as defined below).

3. Comdisco is the owner and lessor of certain equipment (the "Equipment")² used by the Debtor in its various businesses. Accordingly, Comdisco hereby objects to the Debtor's proposed actions to the extent that its ownership interest in the Equipment or the Debtor's tenancy under the Lease is affected.

4. The Equipment is subject to the Lease. The Debtor cannot sell the Equipment³ and it is required to fulfill its obligations pursuant to Section 365(d)(10) of the Bankruptcy Code⁴. The Equipment referenced in the Lease was clearly identified by serial number and description.

BACKGROUND

5. On February 8, 2001 (the "Filing Date"), the Debtor filed a voluntary petition commencing its Chapter 11 case pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"). Upon information and belief, the Debtor is continuing to manage and operate its businesses and properties as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

² The Equipment generally consists of network equipment, phone systems, test equipment, work stations, desktop computers, portable computers, peripherals, office furniture, point of sale computers and other personal property, some of which is set forth on Exhibit C to the Motion.

³ The Equipment is subject to the Lease. Comdisco owns the Equipment. The Debtor can assume or reject the Lease, but cannot sell the Equipment.

⁴ Upon information and belief, as of the date hereof, the Debtor is current on administrative rent with the exception of five (5) invoices for personal property taxes in the amounts of \$2,911.66; \$193.80; \$37.98; \$374.48 and \$283.02.

10. The Debtor continue to incur an administrative claim for the use of the Equipment until the Lease is rejected. 11 U.S.C. § 365(d)(10).⁷

11. Comdisco does not, and has not, consented to the abandonment of Equipment located at the Closed Stores as contemplated by the Motion. Comdisco respectfully requests that this Court prohibit or modify such procedures, because if the Debtor intends to reject the Lease, it must reject the entire Lease. In re Steaks To Go, Inc., 226 B.R. 35, 38 (Bankr. E.D. Mo.1998)(“As a general principle, assumption or rejection by a debtor in possession or a trustee is an assumption or rejection of the entire executory contract.”); In re Metro Transp. Co., 87 B.R. 338, 342 (Bankr. E.D. Pa. 1988)(“We recognize that assumption or rejection of an executory contract requires an all-or-nothing commitment going forward, and that hence a debtor cannot assume part of an executory contract in the future while rejecting another part.”)

⁷ Section 365(d)(10) of the Bankruptcy Code states as follows:

The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

12. Comdisco is owed a total of \$107,861.73⁸ for its prepetition cure amount and \$3,800.94⁹ as its postpetition cure amount. The Debtor has asserted that Comdisco's total prepetition and postpetition claim is \$77,908.76.

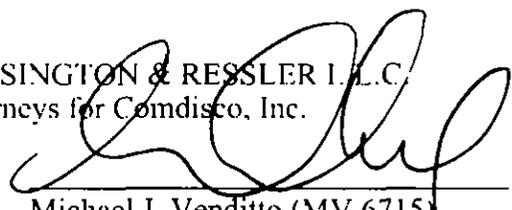
13. Accordingly, Comdisco opposes so much of the Debtor's proposed rejection (including the Debtor's failure to terminate the automatic stay or facilitate the recovery of Comdisco's Equipment as part of such rejection) that rejects only the portion of the Lease governing the Equipment located at the Closed Stores or prevents the prompt return of all or such portion of Comdisco's Equipment to Comdisco.

14. In any event, Comdisco demands that the Debtor maintain appropriate security, protection and insurance for the Equipment until the Equipment is returned to Comdisco, all as is required under the Lease.

WHEREFORE, Comdisco respectfully requests that (a) the Motion be denied, or, in the alternative (b) modified to direct the Debtor to comply fully with 11 U.S.C. § 365 and (c) Comdisco be granted such other and further relief as is just and proper, for all of which no other request has been made to this or any other Court except as is otherwise set forth herein.

Dated: New York, New York
July 3, 2001

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By: 

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⁸ Rent for the period from January 1, 2001 through February 7, 2001 is \$98,574.21 and personal property taxes due under the Lease total \$9,287.52.

⁹ The Debtor paid \$119,692.01 on May 18, 2001, which appears to represent rent due from February 8, 2001 through March 31, 2001.

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: Debtor. :
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AFFIDAVIT OF SERVICE BY TELEFACSIMILE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JEAN CALVIN, being duly sworn, deposes and says:

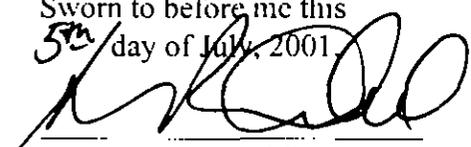
Deponent is not a party to this action, is over 18 years of age and resides in College Point, New York.

On July 3rd, 2001, on or before 5:00 p.m., deponent served a true and complete copy of the Limited Objection of Comdisco, Inc. to Proposed Rejection of Real Estate Leases, Subleases, and Equipment Leases upon:

ALL PARTIES ON THE ATTACHED SERVICE LIST

by transmitting a true copy of same using the Telecopier No. designated by said attorney(s) for that purpose.


JEAN C. CALVIN

Sworn to before me this
3rd day of July, 2001

Notary Public

IRA R. ABEL
Notary Public, State of New York
No. 31-4852292
Qualified in New York County
Commission Expires Jan. 13, 2002

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