

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James Starzynski

James Burke, Law Clerk
Jill Peterson, Courtroom Deputy

Joe Jameson Court Reporters
(505) 242-2809

Irene Delgado X

Date:
Thursday, June 28, 2001

In Re:
FURR'S SUPERMARKETS, INC.
No. 11-01-10779

Status Conference on Pretrial Procedures

Attorney for Debtor: David Thuma
Attorney for UCC: William Davis
Attorney for Heller: Paul Fish
Attorney for Premier: Gail Gottlieb
Attorney for NM Beverage: Michael Cadigan

Summary of Proceedings:

Exhibits _____

Testimony _____

STATUS CONFERENCE HELD

DAVIS WILL SUBMIT ORDER

D: Movant and two obj. have worked out approval. UST still has obj. The proposal we would like to put on the record is in conformance of Chanin's

engagement ltr. Iss. we are addr. is two alter. If Fleming deal does go through, Chanin will have admin. prior. If the Fleming deal for some unbelievable reason doesn't close, Chanin's 3 mos. of service will be til Aug. 17. Fleming will close between Aug. 15 and Aug. 31. Could be extended. Chanin could rec. \$300k for serv. rendered. If Fleming deal falls apart and committee wants more serv., has right to come back and raise iss. of Chanin's scope of serv. That is the deal as I understand it. Two other small points, Chanin waives claim for success fee. Waive any clm that elim. iss. of capital leases.

Ct: Hadn't thought about that.

D: W/iss. of indemnity claim, Chanin will take whatever result. Encompasses our agmt.

Fish: We agree. Two points. No guarantee of pymt from lenders. If get into carve out, which seems to be getting closer and closer. If the comm. after some horrible thing happens, my guess is our position is there would be no need for an invest. banker. Iss. on the table.

Ct: I was under impress. there was a min. of 4 mos.?

D: At first it was. After negot and w/a view of time frame the \$300k figure was arrived at.

F: Duplic. of serv. Today 3 people for Chanin and 3 from Deloitte advising. Chanin's fee is a flat fee. Not something that would be raised as a duplic. If somebody thinks that maybe 5 people weren't necess., is no prob.

D: No challenge to \$300k fee.

Ct: I had looked at that in connect. w/Deloitte in connect. w/PWC and would addr. that when I gave you a decis. on Solomon. The invest. banker had a specif. function than the financial advisors. If perform function and get a flat fee, do work and entitled to get their fee. If do some of the same work Deloitte is doing, but if Solomon still did the job they were hired to do nothing to do w/compens. of Solomon and Chanin. What you are saying resonates. Makes sense to me. Way I was going to deal w/staffing of data room. Can be raised at time of applic. for compens. I gather you came to conclus. a long time ago.

J: What Mr. F. said for lender applies to dtr. Dtr coming back and asking to approve further retent. the dtr reserve right to obj. as necess.

A: Before I start if I could ask for clarif. of ruling on Solomon. Ct made refer. to 330. Was it the intent to req. Solomon to submit fee applic. Was it under the not foreseeable circum. of 328.

Ct: For long time I was under mistaken impress. if you hired under 328 (a) differ. than 327. That impress. was mistaken. Don't have specif. case law. I went back to sub. ch. 2 of sub. ch. 3. Got sec. 321, 322, 323, 324 and 325 which talk about how you get to be a trustee. Next sec. 326 talks about compens. of trustee. 327 talks about how you get to be a prof. 328 is the limit. on compens. of prof. persons. I see those as a parallel structure set out in sub ch. 2 of sub ch. 3. 331 deals w/compens. of officers and interim compens. Deals w/trustees and prof. Based on that structure, whet. somebody get approved in theory is under 327. 328 talks about compens. Differ. than 330 and 331 iss. So there will undoubtedly be a review of all the prof. compens. w/this case. At same time this lang. says once I approve a certain compens. that is what the level of compens. will be unless developments. Apply not to the invest. banker, but also to other prof. Having said that I

am saying that when Solomon comes in or Chanin comes in and says we want our \$300k. Working on the ruling in connect. w/Solomon. Concerns me is the iss. of related fees. Related req. for expenses. I do think I need to be able to take a look at that. Show the prof. that were emp. - need to prove they earned that chunk of money. What triggered my concern is when we had the hrg on Solomon and had Ms. Fife on the phone said we would like you to rule quickly. Long time since on table. What concerned me was said I just got the final draft of the engagement ltr. Her resp. was I haven't been keeping track of that iss. I have no idea what Ms. Fife is getting paid it seems knowing the status of the engagement ltr would ordinarily be a part of her job. Decided I need to keep an eye on what the prof. are charging.

A: I won't belabor the point. We will stand on the brief that was filed. Very similar to brief filed on Solomon. See the writing on the wall.

Ct: What ran through my mind on indemnity is a couple of things. Test. somewhere. Test. that this kind of indem. arrangement is the way invest. banking is done. Not out of ordinary course of bus. Your argum. is bankr. is differ. That was one point. Second, once the unsec. creds comm. said we would like to hire Chanin w/same indem. provis. that led me the following reasoning. One of the iss. is how do we deal w/this prob. How deal w/effect. indem. prov. Ques. I asked and answered when we had hrg on Solomon. In turn that leads me to think that the money to pay Chanin and Solomon in the event of indem. is coming out of sec. creds or unsec. creds. Or I guess it may be shared in some way w/the other admin. claimants. If sec. creds are willing to take that risk w/their clients money, that to me is a strong argum. that sugg. I ought to go ahead and do it unless a strong policy argum. Part of my thinking. Made decis. for me a whole lot easier.

A: Don't want to belabor the point. Stated everything in brief. Our position is from a policy standpoint. Understand the court's decis.

D: Your decis. brought up something. \$300k is for expenses as well. Subj. to obj. and review by the court.

F: I did not read the applic. on atty fees. Travel and lunch.

Ct: Who will prepare form of order.

D: I will. Rule on trustee's obj. He didn't withdraw it.

Ct: I am overruling the trustee's obj. I was planning on doing the Solomon order. Could do the Chanin order.

F: Is differ.

Ct: Go ahead and do it. May do a short memor. Need to addr. Solomon iss. and Chanin iss.

D: Will get you the Chanin order asap.