

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

Sara Edmonds X

Date:
TUESDAY, AUGUST 14, 2001

In Re:
FURRS SUPERMARKETS, INC.
No. 11-01-10779 SA

FH on Proposed Cure Amount or Proposed Provisional Cure Amount

Attorney for Debtor: David Thuma, Mortenson and Wallach
Attorney for Greenleaf:
Attorney for Heller and Fleetwood: Paul Fish
Attorney for Tri-State: Dave Giddens
Attorney for Furrs 1 LLC: John Farrow
Attorney for 862: Duncan Scott
Attorney for Mossman Gladden:
Attorney for CFP1, et al.: Steve Vogel
Attorney for UCC
Attorney for James Jacobsen
A Dan Behles
Attorney for Weingarten Realty: Emily Franke

Attorney for Compaq: James Prince

Summary of Proceedings:

Exhibits _____

Testimony _____

SETTLED - THUMA WILL SUBMIT ORDERS

T: Pretty much have agmts w/everyone. Talked to Greenleaf. Will prepare an order to memorialize all of this. Resolved obj. Stip. order modif. stay. Tender two orders.

Ct: Resolve partial assumpt. iss.?

M: No. Circulating out there.

T: Making progress. Store # order. Store 862 - Los Lunas Shopping Center. Proposed a cure amt. Reached an agmt w/this landlord. Cure amt of \$2,362. Penalties and Interest on late fees.

Scott: Yes. Correct.

T: Store #874. River Oaks. Has five stores. 3 River Oaks. Lakeway and Charlene Green. Store #874 - agreed to increase of amt \$920. Mr. Miranda will submit a short brief on that matter by Friday. \$12k for 3 leases. #916 - Lakeway. Agreed to an increase of amt \$1,056.16. Same agmt on atty fees. #948 - Ground lease. Charlene Green - only obj. was on atty fees. Cure amt has been agreed to. Will do brief. #950 River Oaks - cure amt of \$128k. Will brief atty fee iss. Store #952 - cure amt of \$144k. Will brief atty iss. separ. Mountain Run - Obj. by somebody other than Mr. Farrow. He also obj. Save to end.

Farrow: Amt perpet. amt cure are accur. Differ. on amt of taxes. Feel we will be able to come to an agmt on the #'s. Verify #'s. Stip. to #'s.

T: Also obj. about post-pet. rent. # of obj. w/respect to Aug. rent. Does not include Aug. rent. Mr. F. obj. about atty fees. Not talked.

F: True.

Ct: If not able to work out, do in briefing sched. w/Mr. Miranda.

F: Fine.

T: Store #876 - agree w/Mr. B. on amt of taxes due. \$16k. Mech. lien obj. in amt of \$173k. Willing to agree that is our oblig. to make sure that lien is released. Reserve right to bond over lien. Have right to say to contractor we don't owe you that much money. Is that acceptable to you?

Becht: Is acceptable. Part of contract. Rec'd phone call from Rio Grande Title. Called to advise me there are addit. liens. Don't know if regis. w/us or Mr. F. client. Said they could get me copies of the liens by Friday. Comes to a surprise to Mr. T.

Ct: Take til Fri. to get these liens to you. Title co.

T: Prob. need to look at them. Cont. this matter?

Ct: W/this landlord? Yes. Makes sense.

T: Get them to me.

Ct: Give you a quick setting is need be.

T: #878 - 3 leases w/Weingarten. Total cure amt. \$44k. Not include Aug. rent or 2001 taxes. Landlord was conc. somebody is going to pay amts accruing. Under these leases the landlord pays. Proposing not to have that amt in the cure prov. Our contract w/Fleming will reduce purch. price. Conc. w/landlord

and Mr. Behles is to make sure landlord isn't left w/o obligee.

Ct: Comfortable w/that Ms. F?

F: Yes. Store #878. Haven't rec'd Aug. rent. Dtrs position is not rec'd will be included in cure amt. W/respect to the lease on store #947 last week the court approved assign. to Big 8. Other two court declined to grant assign. of those leases. If not assumed and assigned w/in this mo., there is possib. of addit. amts accruing. Don't want to waive our rights. Under both leases the dtr is oblig. Are accruing at this time. Our concern has been under m/for assign. the third parties are taking them free and clear. Dtr is released of further oblig. Fleming - bec. going to third parties will never be oblig. on these leases. Our understanding Fleming is assum. the oblig. to 2001 taxes. See an order that there is an assur. that these are paid.

T: Agree w/all of that, but I don't think Fleming is assuming all the leases. Mr. Price says that is right. No ques. among parties about this proced. and who will pay for what. Will put in an order. Mr. B. asked that I get a contract that Big 8 is contractually bound. O.K. w/me. Or done another way.

Ct: Talking about real estate taxes and Aug. rent.

T: Aug. rent is differ. Our oblig. Will be paid at closing. Oblig. under lease.

Ct: Real estate taxes. Bills the lessee for reimb. No ques. the dtr will be liable to the landlord, but liable for that portion of real estate taxes that accrue from time assign. is made to whomever the assign. may be.

T: Not in my mind.

F: Agree.

Ct: Pre-pet. amts and post-pet. amts.

T: At closing Fleming will look at lease. Get a purch. price reduct. and either Fleming or designee is liable for entire amt of tax.

Ct: How will you addr. Ms. F. concern? Got Mr. B. sugg. Will abide by lease and when I get a bill, will pay whole bill.

T: Is the theory. Our solution is to get lang. in order that will make sure Fleming or designee is liable for entire year. Ques. is whet. that order is binding on assignee or not.

Ct: I think it will be binding on assignee. If Fleming has to cough up money, has a claim. W/respect to the assignees are capable of making these pymts. Adeq. assur. we are going thru is to make sure they can pay. Order allow. assign. ought to take care of your folks.

F: As long as we have an order by this court, that takes care of our concerns.

W: That's what we prefer. Like to not have to go w/them w/a mother may I.

Ct: Makes sense. Work for you.

F: Yes.

T: #886 - agree on a cure amt of \$13k. Store #947 - increase cure by amt of \$4,980. Right?

F: Thought that was #878.

T: You are right. #947 our cure amt is accurate. #879 - Keleher Realty. Agreed on a mech. lien of \$34k. Also like same right to bond over lien. Ques. about rent figure. Don't know what Mr. J. needs in open court.

J: 5 mech. liens totaling \$35k. Proceed. is fine w/us. Keleher Realty is where rent is signif. paid. Fleming would not be liable up to point of closing. Make sure someone is respons. for that. Furrs will notify Fleming. Sometime between Jan. 1 and Feb. 14, 2002 will be respons. for paying percent. rent.

T: Fine. Agreed the amt due and owing is \$17k. Agreed to an atty fee of \$80.

J: I didn't write the lease.

T: Our prop. cure is agreed by landlord.

J: Whatever is due will be paid by Fleming. Indemnif. clause. Mr. T. was going to give us a warranty.

T: Not aware of 3rd party claims. Next two - #881 and 884 - Kinderman. Only ques. raised is about percent. rent. Brought ltr. Shows no rent due.

J: Again, w/taxes is moving target.

T: W/all landlords will have same stip. w/2001 taxes. Center America - 3 locations. #882 - agreed the cure amt is \$44k.

V: That is correct. Addit. amt of \$24k which is the common area escrow over next 7 mos.

T: Accruing, but not yet due. Not be put in cure amt. Oblig. of assignee. Handle in similar fashion.

Ct: Good.

T: #899 - \$44k.

V: Agree.

T: #953 - \$98k.

V: Agree. All related.

T: #889 - Nydes. Agree to following cure amts. \$2k for pre-pet. rent. \$2k for atty fees. \$139 correct. to 2000 taxes. Total \$8k.

Behles: Subj. to upgrading to Aug. 6. Sure we can work it out.

Ct: Upgrade of atty fees.

B: Entitled to collect under terms of lease. My client had same concern w/respect to taxes. I agree w/Mr. T. the taxes are due yet. Req. the order contain lang. that the lease can't be assigned unless prorated taxes are paid. Addr. is some other fashion.

Ct: No specif. lang.

B: Under the code have agreed to adeq. assign. All we have to do is cure amts. Like the order to deter. the cure amt to recite that in addit. to cure

amt.

Ct: Provis. that says the assignee is liable for 2000 taxes. Not inclined - ques. about making a condition on that.

B: Clear the approp. amt for assign. is for time of occupancy.

Ct: Assignee will be liable for 2000 taxes.

B: Lang. in our specif. leases...

Ct: Hear what I said, notwithstanding. Can walk away.

T: Think that solves the prob. Can't imagine they would say they aren't liable.

B: My client doesn't want to get into anymore litig.

Ct: Meant to say 2001 taxes. Are you asking the order prov. the assignee pay the taxes now?

B: No. To be assigned, the existing def. be cured. Assign. must either pay the pro rata taxes or pay 2001 taxes when due.

T: How do you want them to agree? Sign something?

B: Yes. Can say we have a right to assign lease.

Ct: I will be bound by terms of this order.

B: Reverse prob. w/insurance. Pay in advance. Billed Furr's for pro-rata share.

T: How much is one month?

B: \$500.

T: Will pay one month. Pay thru time of assign.

B: No prob.

T: #914 - Prop. cure of \$1,147. One mos. rent. Said we owed addit. mos. rent. We have increased our cure to \$2800. #917 and #918 - Claus Doelling - reached an agmt. #917 - Total is \$20k. No atty fees includ. in cure. Store #977 - landlord is Roche. Agreed to their figures. \$23k. Tri-State - \$10k. Not include Aug. rent.

G: Would you itemize the amts?

T:

G: That is correct.

T: #875 - Mountain Run. Differ. landlord for portion of prop. Agreed to a cure amt of \$2,160 for Mountain Run Partners Ltd. W/respect to equip. leases - Finova. Mr. Guon and I have negot. a cure amt. 3 sched. for leased prop. One addit. lease sched. that is not dealt w/. Agreed that is not a lease. #6070101 - \$81k. #22200101 - \$86k. #22200301 - \$280k. Agreed to an atty fee of not to exceed \$40k.

Ct: For whose work?

G: Charles Shulman and my work. That is high. I will prov. Mr. T. w/the exact amt.

Ct: Hourly rate, not percentage.

T: Reason it is higher is this leased prop. is worth \$6mil. Negot. heavily. A lot more work involved in equip. leases and we recog. that fact.

G: Breaking up cure amt is w/o prej. to Finova's position that you cannot segment out ea. lease sched. It is one large lease.

Ct: What was the arrangement the severance argum. is Finova is not subj. to that bec. is own ch. 11.

T: Are a named party in the contested matter.

G: Correct.

T: Reserve rights w/respect to legal position. G.E. Capital matter that will be held by Judge McFeeley. Heller- \$28k.

Ct: Put together an agreed upon order.

F: Cure for the lease. Is more than one lease. Part is sec. int. If cure the lease, it is that figure.

Ct: Intending to enter a partial order resolving that?

T: I was going to.

Ct: Spent some time this morning consulting w/Judge Peter Bouie about iss. of Heller and G.E. Kept coming back to my mind. He gives lots of opin. on this iss. but not formal opin. by committee itself. Clear under canons I am considered as an owner of G.E. stock have interest of any subsid. that is owned by G.E. No formal ruling either published or in compendium about a purch. of G.E. of Heller. Judge Bouie tells me what they do is analogize the situation to a situation in which a law clerk to a judge has accepted emp. to a law firm, but hasn't gone to work for them. Judge Bouie told me this morning that is the same reasoning that the comm. uses when they make these decis. w/respect to a purch. of one co. by another. There is a prob. here obviously in short term w/me signing off on Heller. Whet. I recuse from this case - how deeply involved is Heller or is Heller so intimately involved would be approp. to rule on a further signif. part of case. Or alternatively, get rid of the stock. Not made that initial analysis. Not made subseq. decis. either. What I am in process of doing is noodling thru that and will let parties know as soon as possible. Judge Bouie has been doing this for many years and I respect. I thought I ought to give you an update on what was happening.

T: Resp. from MDFC - Boeing Leasing. Nothing to be addr.

Ct: These settlements are all provisional? Contesting you can sever those.

T: Right. If we prevail is moot. Don't have Mr. P. client down as an objector. Missing something?

P: No. My client's cure # ties into the dtrs #. I learned from my client that the Aug. rent has not been paid and the dtrs # and my # were thru July. If not made, have right to make the Aug. pymt made.

T: Fine. Next, is ComDisco. Filed ch. 11 on July 16. Rec'd a ltr from this

last night. Ques. whet. it violates the stay. Setoff - my client did on July 2 this year. Wasn't sure of timing. Talked about whet. we could reach an agmt. Sounded pretty promising. Would cont. this hrg today and not get a date. Think we can work something out. Told him you had been taking calls from out of state counsel.

Ct: Makes sense to me. In obj. filed said they had filed a ch. 11. When?

T: July 16.

Ct: Think that w/everything else going on would want to get this out the door and not worry about it.

T: Fleet - reached ultimate settlement w/Fleet. \$90k. Will talk to Mr. Farrow about atty fees.