

FILED
12:00 MIDNIGHT

SEP 10 2001

DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE:

**FURR'S SUPERMARKETS, INC.,
DEBTOR.**

§
§
§
§

**CASE NO. 11-01-10779-SA
(Chapter 11)**

**MOTION FOR RECONSIDERATION OF ORDER APPROVING
DEBTOR'S ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES
WITH RESPECT TO STORES ASSIGNED TO SAFEWAY, INC.**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Safeway Inc. ("Safeway"), a party in interest in the above referenced bankruptcy case and the assignee of the leases for Stores #878, 882, 904, 916, and 945 (the "Store Leases") that were assigned by the above referenced debtor ("Debtor") to Safeway pursuant to the Order Approving Debtor's Assumption and Assignment of Unexpired Leases, which was entered on August 31, 2001 (the "Order"), and files its Motion for Reconsideration of the Order, as follows:

1. Safeway entered into an agreement with Fleming Companies, Inc. ("Fleming") whereby Safeway would be the assignee of the Store Leases. In addition, for certain Store Leases, Safeway agreed with Fleming to enter into subleases and rent concession agreements with the store operators. One of the conditions of the agreement with Fleming was that the assumption and assignment of the Store Leases by the Debtor be approved by the Court.

2. The agreement with Fleming did not include or contemplate any in-store subleases (e.g. for in-store banks) (the "In-Store Subleases"). Safeway never agreed or intended to take any In-Store Subleases. Further, none of the Debtor's motions or notices related to the assumption and assignment of the Store Leases referred to any In-Store Subleases, and no copies of any In-Store Subleases were provided to Safeway prior to the Order being entered.

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3. The hearing to consider the Debtor's assumption and assignment of unexpired leases was originally scheduled for Thursday, August 30, 2001. A representative of Safeway and counsel to Safeway made arrangements to attend the hearing. However, on very short notice, the hearing was rescheduled for Wednesday, August 29, 2001, and counsel for Safeway was unable to attend the rescheduled hearing. However, after confirming with counsel to the Debtor that no objections had been filed to the proposed assignments to Safeway and after reviewing the proposed form of orders to be submitted pursuant to the Notice of Presentment Hearing on Lease Assumption and Assignment Orders, dated August 23, 2001, Safeway determined that it did not need to attend the hearing.¹ By email dated August 28, 2001 (Exhibit A hereto), counsel for Safeway specifically informed counsel to the Debtor that it was not attending the hearing in reliance on the fact that the proposed form of orders would be submitted unchanged to the court. Further, counsel for Safeway specifically requested advance notification of any proposed changes to the orders and informed counsel to the Debtor that the hearing on the Store Leases should be postponed if any issue should arise with respect to the stores proposed to be assigned to Safeway.

4. Counsel for Safeway never received any notification of the changes to the proposed form of Order, but only learned of the following paragraph 4 which was added to the Order when counsel obtained a copy of the Order on-line after the hearing:

The third party assignments shall take the assigned Leases subject to all outstanding subleases between the Debtor as sublessor and the subtenants of the subleases. Upon assignment, the Debtor shall be relieved of all liabilities that accrue after such assignment under the subleases.

¹ The original proposed form of Order Approving Debtor's Assumption and Assignment of Unexpired Leases made no mention of any In-Store Subleases.

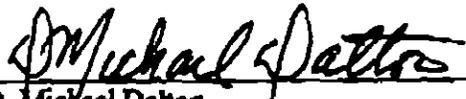
5. In addition, subsequent to the entry of the Order, counsel for Safeway learned that the Store Leases for the following stores, which had been closed at the time of the Order, were encumbered by In-Store Subleases, as follows:

Store #	In-Store Subtenant
878	Wells Fargo Bank
882	Wells Fargo Bank
945	Continental National Bank and Fred Loya Insurance Co.

6. As stated above, Safeway never agreed and does not intend to take the assignments subject to the In-Store Subleases. Accordingly, to the extent the assignments are subject to any In-Store Subleases,² Safeway seeks reconsideration of the Order with respect to the approval of the assignments to Safeway.

WHEREFORE, Safeway respectfully prays that the Court reconsider the Order Approving the Debtor's Assumption and Assignment of Unexpired Leases, which was entered on August 31, 2001, with respect to the approval of the assignments of Store Leases to Safeway, and for such other and further relief as is just.

Respectfully submitted,

By: 
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ATTORNEYS FOR SAFEWAY, INC.

² If Safeway can obtain written confirmation from each of the subtenants for the In-Store Subleases that such subleases are terminated or expired and thus, the subtenants will not be asserting any rights against Safeway as assignee of the Store Leases, then Safeway will withdraw this Motion. Safeway has been unable to obtain such written confirmation from all of the subtenants to date.

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Motion has been forwarded to the following parties by first class U.S. mail, postage prepaid, on this 10th day of September, 2001:

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D. Michael Dalton

GORE, JENNIFER

From: GORE, JENNIFER
Sent: Tuesday, August 28, 2001 6:52 PM
To: 'dthuma@jtwlawfirm.com'
Cc: Chad W. Otten (E-mail); Denise Roman (E-mail); DALTON, MIKE; Robert H. Jacobvitz (E-mail)
Subject: Safeway; Furs

David,

Safeway does not intend to attend the hearings tomorrow. However, we are relying on the fact that the Orders included in your Notice of Presentment Hearing on Lease Assumption and Assignment (dated August 23, 2001) will be submitted unchanged to the Court, except to the extent the exhibits are updated in accordance with the attached schedules which you furnished to me today by email at 3:00 pm (Houston time). If there are any changes to the Orders or schedules, we must be notified before the hearings commence. In that event or if other issues should arise with respect to Safeway, we understand from the Judge's clerk that the Judge is amenable to hearing the Safeway matters separately to allow more time if requested by Safeway and the Debtor.

Thank you for your attention to this matter.

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