

**FILED**  
12:00 MIDNIGHT

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

OCT 12 2001

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA  
Chapter 11

MAIL ROOM BOX  
United States Bankruptcy Court  
Albuquerque, New Mexico

Debtor.

**MOTION TO SELL CERTAIN PERSONAL PROPERTY IN STORE #954 FREE  
AND CLEAR OF LIENS AND INTERESTS, AND TO APPROVE SETTLEMENT**

Furr's Supermarkets, Inc., debtor in possession (the "Debtor"), pursuant to Bankruptcy Code §363(b)(1) and Bankruptcy Rule 9019, files this motion for an order allowing the Debtor to sell certain personal property located in the Debtor's closed store #954, and to settle a controversy in connection therewith, in support hereof states:

1. On February 8, 2001, the Debtor commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Bankruptcy Code §§1107(a) and 1108, Debtor has retained possession of its assets, as Debtor in Possession, and is continuing to operate its business.

2. In August, 2001, the Debtor closed one of its grocery stores (#954), which contained certain in-store equipment that was leased to the Debtor by Heller Leasing, Inc. ("Heller Leasing") (the "Store Equipment"). The Store Equipment does not include any personal property that is leased to the Debtor by third parties other than Heller Leasing.

3. Heller Leasing, the Debtor, and the owner of store #954, Mr. Adrian Baca ("Baca") have reached an agreement to sell the Store Equipment to Baca, free and clear of liens and interests, for \$200,000.

4. It is in the best interests of the Debtor and its creditors to approve the sale of the Store Equipment to Baca in accordance with the terms and conditions set forth herein.

5. The only parties that claim a lien or other interest in the Store Property are Heller Leasing and the Debtor's pre- and post-petition bank lenders (the "Lenders").

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8. The Store Property would be sold free and clear of liens and interests, with all liens and interests attaching to the sale proceeds. All sale proceeds would be paid over to Heller Leasing, to be held and applied as further ordered by the Court upon final resolution of the pending adversary proceeding no. 01-01160 between the Debtor as Plaintiff and Heller Leasing as Defendant (the "Recharacterization Adversary Proceeding").

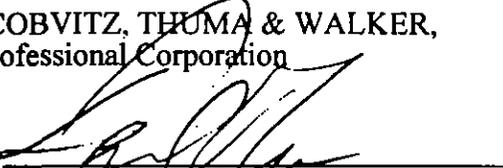
9. The Store Equipment will be transferred to Baca by bill of sale executed by Heller Leasing and the Debtor, as their interests may appear, "as is and where is," with no representations or warranties made by the Debtor or Heller Leasing.

10. Upon approval of the sale, Baca would release Heller Leasing and the Debtor from any and all claims relating to the Store Equipment and/or store #954, including without limitations any claims based upon trespass or for rent; provided, however, that Baca will not release the Debtor from any pre-petition or post-petition rent claim that accrued prior to August 31, 2001.

11. The transaction outlined herein has been agreed to by the Debtor and Heller Leasing without prejudice to their respective legal rights and positions in the Recharacterization Adversary Proceeding.

WHEREFORE, Furr's respectfully requests that this Court enter an order granting the relief requested herein, and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER,  
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