

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

FILED
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U.S. DISTRICT COURT
ALBUQUERQUE, N.M.

In re:

FURR'S SUPERMARKETS, INC.

Debtor.

Case No. 11-01-10779 SA
Chapter 11

**MOTION TO CLARIFY PORTIONS OF ORDER
(ORDER APPROVING DEBTOR'S ASSUMPTION AND ASSIGNMENT OF
UNEXPIRED LEASES, FILED ON AUGUST 31, 2001, AS DOCUMENT
NUMBER #1011)**

COMES NOW Wells Fargo Bank New Mexico, N.A., an interested party, by and through its attorneys Rodey, Dickason, Sloan, Akin & Robb, P.A., by William J. Arland, III, and moves this Court to enter its order clarifying that its Order Approving Debtor's Assumption and Assignment of Unexpired Leases, entered on August 31, 2001 as Document Number 1011 does not constitute approval of the Debtor's assumption and subsequent assignment of certain subleases between the Debtor as sub-landlord and Wells Fargo Bank New Mexico, N.A. as sub-tenant or as a rejection of said subleases pursuant to 11 U.S.C §365(h) and as grounds therefore states:

1. The Court's Order of August 31, 2001, among other things, approved assumption of certain leases of real property by the Debtor and the assignment of those certain leases to various and differing third parties.

2. Wells Fargo Bank New Mexico, N.A. was not a party to that action, but counsel for Wells Fargo Bank New Mexico, N.A. attended, as an observer, the hearing, from which the Order emanated.

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3. Certain parcels of the real property leased to the Debtor, were, in turn, subleased, to Wells Fargo Bank New Mexico, N.A. pursuant to individual schedules attached to a document entitled *Master Lease and Option Agreement*, dated June 1, 1996, by and between the Debtor and Bank of New Mexico, n/k/a Wells Fargo Bank New Mexico, N.A.

4. In addition to being a Master Lease for bank branches in existing Furr's Supermarkets Stores, the document contained exclusivity and non-compete clauses, which extended to include subleases in future Furr's Supermarket Stores, if any.

5. Paragraph 4 of the decretal portion of the Order reads as follows:

"4. The third party assignees shall take the assigned Leases subject to all outstanding subleases between the Debtor as the 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."

6. The Debtor has not sought court approval of either the assumption or rejection of the subleases with Wells Fargo Bank New Mexico, N.A.

7. Assumption and assignment of the subleases by the Debtor may pose a set of circumstances that inadvertently and unintentionally places Wells Fargo Bank New Mexico, N.A. in immediate breach of either the exclusivity or non-compete provisions of the Master Lease and Option Agreement with other third party assignees of the same Master Lease and Option Agreement, or, alternatively places Wells Fargo Bank New Mexico, N.A. in the position of being required to sublease portions of real property from a third party assignee, construct and operate a branch bank in a facility and at a location that is not commercially feasible, to the harm and damage of Wells Fargo Bank New

Mexico, N.A., which construction and operation, in turn, may constitute a breach of the exclusivity and/or non-compete clauses of the Master Lease and Option Agreement with another third party assignee.

8. Wells Fargo Bank New Mexico, N.A. was entitled to notice of the Debtor's intention to assume or reject the subleases, opportunity to object to the assumption, and, following notice, a hearing on its objection.

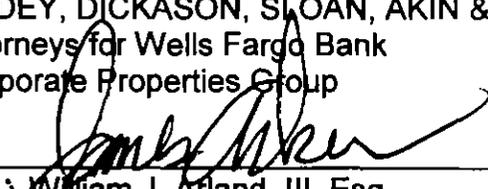
9. The assumption of the subleases by and between the Debtor and Wells Fargo Bank New Mexico, N.A., and the subsequent assignment to various and different third parties should not be approved in a manner that results in economic damage to Wells Fargo Bank New Mexico, N.A.

WHEREFORE, Wells Fargo Bank New Mexico, N.A. moves this Court to enter its order decreeing that its previous order entered as Document Number 1011 does not constitute an assumption or rejection of the Master Lease and Option Agreement, including, without limitation all schedules thereto, by and between the Debtor and Wells Fargo Bank New Mexico, N.A.

Dated: December 14, 2001

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB
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CERTIFICATE OF SERVICE:

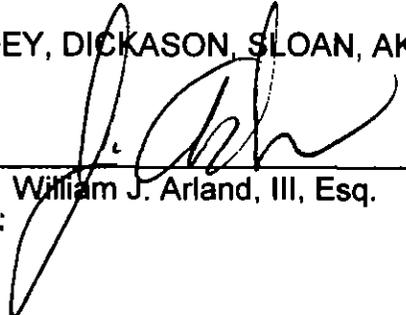
I hereby certify that I mailed a true and correct copy of the foregoing pleading, by U.S. Mail, first class, postage prepaid, on this 14th day of December, 2001 to the following:

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