

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

10/24 PM 3:33
BANKRUPTCY COURT
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779 SA
Chapter 7

Debtor.

**MOTION FOR ORDER DIRECTING THE TRANSFER
OF FUNDS INTO THE COURT REGISTRY**

Yvette J. Gonzales, Chapter 7 Trustee (the "Trustee"), moves the Court for entry of an order in the form attached hereto as Exhibit A. In support of this Motion, the Trustee states:

1. Pursuant to paragraph 11 of an Order Approving Escrow of Funds and Release of Inventory, filed September 21, 2001 as docket no. 1083, the sum of \$500,000.00 was deposited in an escrow account maintained by then counsel for the Debtor in Possession, Jacobvitz, Thuma & Walker P.C. (such funds, with any interest earned thereon, is called the "\$500,000 Escrowed Amount").

2. Pursuant to Section 4.1(c) of the Asset Purchase Agreement between Furr's Supermarkets, Inc. and Fleming Companies Inc. (the "Agreement"), approved by an order entered July 3, 2001 as docket no. 710, the Debtor in Possession held back \$2 million pursuant to the terms of the Agreement (such funds, with any interest earned thereon, is called the "\$2 million Escrowed Amount"), which \$2 Million Escrowed Amount was deposited in an escrow account maintained by then counsel for the Debtor in Possession, Jacobvitz, Thuma & Walker P.C.

1679

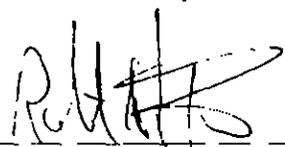
3. Pursuant to an Order Authorizing Chapter 7 Trustee to Expend Funds For Wind-Up Matters, and Directing Transfer of Reserve Account, filed December 21, 2001 as docket no. 1434, Jacobvitz, Thuma & Walker P.C. transferred the \$500,000 Escrowed Amount and the \$2 Million Escrowed Amount, among other funds, to the Chapter 7 Trustee, which she is holding in escrow.

4. The Chapter 7 Trustee desires that the \$500,000 Escrowed Amount and the \$2 Million Escrowed Amount be transferred to and held in the registry of the Court, pending further order of the Court, rather than being held by her. Transferring the funds into the Court registry will reduce the amount the Trustee will incur for the Trustee's bond, and avoid a dispute regarding who ultimately should bear the cost of such premium.

5. It is appropriate to limit notice of this motion, and of a hearing on this motion, to those parties set forth in the certificate of service below.

WHEREFORE, the Trustee asks the Court to enter the attached order.

JACOBVITZ, THUMA & WALKER
a Professional Corporation

By: 

Robert H. Jacobvitz
David T. Thuma
500 Marquette NW, Suite 650
Albuquerque, NM 87102
(505) 766-9272
(505) 766-9287 (fax)
Attorneys for the Trustee

This certifies that a copy of the
foregoing was served by U.S. mail
and by email on:

Mr. Ronald E. Andazola
Assistant United States Trustee
P.O. Box 608
Albuquerque, New Mexico 87103
Email address: ronald.Andazola@usdoj.gov

David S. Heller
Latham & Watkins
233 South Wacker Drive
Sears Tower, Suite 5800
Chicago, Illinois 60606-6401
Email address: david.heller@lw.com

Paul M. Fish
Modrall Sperling Roehl Harris & Sisk, P.A.
500 4th St., N.W., #1000
Albuquerque, New Mexico 87103-2168
Email address: pmf@modrall.com

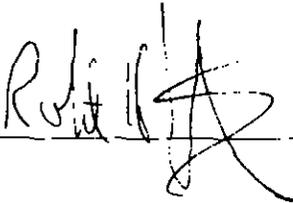
Ronald J. Silverman
Bingham Dana LLP
399 Park Avenue
New York, New York 10022-4689
Email address: rjsilverman@bingham.com;
Email address: srsavoia@bingham.com;
Email address: jbalter@bingham.com

Jennie Deden Behles
J. D. Behles & Associates, P.C.
P.O. Box 849
Albuquerque, New Mexico 87103
Email address: behles@jdbehles.com;

Louis Price
McAfee & Taft P.C.
Tenth Floor, Two Leadership Square
Oklahoma City, Oklahoma 73102
Email address: Louis.Price@mcafeetaft.com

James A Askew
Rodey, Dickason, Sloan,
Akin & Robb PA
P. O. Box 1888
Albuquerque, NM 87103-1888
Email address: jaaskew@rodey.com

this 24th day of May, 2002.

A handwritten signature in black ink, appearing to read "James A. Askew", is written over a horizontal dashed line.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779 SA
Chapter 7

Debtor.

**ORDER DIRECTING THE TRANSFER
OF FUNDS INTO THE COURT REGISTRY**

This matter came before the Court on the Motion for Order Directing the Transfer of Funds into the Court Registry (the "Motion") filed May 24, 2002 by Yvette J. Gonzales, Chapter 7 Trustee (the "Chapter 7 Trustee").

The Court finds:

(a) Pursuant to paragraph 11 of an Order Approving Escrow of Funds and Release of Inventory, filed September 21, 2001 as docket no. 1083, the sum of \$500,000.00 was deposited in an escrow account maintained by then counsel for the Debtor in Possession, Jacobvitz, Thuma & Walker P.C. (such funds, with any interest earned thereon, is called the "\$500,000 Escrowed Amount").

(b) Pursuant to Section 4.1(c) of the Asset Purchase Agreement between Furr's Supermarkets, Inc. and Fleming Companies Inc. (the "Agreement"), approved by an order entered July 3, 2001 as docket no. 710, the Debtor in Possession held back \$2 million pursuant to the terms of the Agreement (such funds, with any interest earned thereon, is called the "\$2 million Escrowed Amount"), which \$2 Million Escrowed Amount was deposited in an escrow account maintained by then counsel for the Debtor in Possession, Jacobvitz, Thuma & Walker P.C.

Exhibit "A"

(c) Pursuant to an Order Authorizing Chapter 7 Trustee to Expend Funds For Wind-Up Matters, and Directing Transfer of Reserve Account, filed December 21, 2001 as docket no. 1434, Jacobvitz, Thuma & Walker P.C. transferred the \$500,000 Escrowed Amount and the \$2 Million Escrowed Amount, among other funds, to the Chapter 7 Trustee, which she is holding in escrow.

(d) The Chapter 7 Trustee desires that the \$500,000 Escrowed Amount and the \$2 Million Escrowed Amount be transferred to and held in the registry of the Court, pending further order of the Court, rather than being held by her.

(e) Entry of this order, without notice to any persons other than those served with the Motion as set forth in the certificate of service thereon, is appropriate in the particular circumstances.

IT IS THEREFORE ORDERED:

1. The Chapter 7 Trustee is directed to transfer the \$500,000 Escrowed Amount and the \$2 Million Escrowed Amount to the Clerk of the Bankruptcy Court for District of New Mexico (the "Clerk") for deposit into the registry of the Court.

2. The Clerk is directed to (a) deposit the \$500,000 Escrowed Amount transferred to it by the Chapter 7 Trustee in an interest bearing account and (b) invest the \$2 Million Escrowed Amount transferred to it by the Chapter 7 Trustee in a 90-day certificate of deposit ("CD"), and when such CD expires to invest the \$2 Million Escrowed Amount in an interest bearing account.

3. The \$2 Million Escrowed Amount shall be transferred from the registry of the Court only pursuant to further order of the Court in accordance with Article XII of the

Asset Purchase Agreement. The \$500,000 Escrowed Amount shall be transferred from the registry of the Court only pursuant to further order of the Court.

THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

JACOBVITZ, THUMA & WALKER, P.C.

By: _____

Robert H. Jacobvitz

David T. Thuma

500 Marquette, NW, Suite 650

Albuquerque, NM 87102

505-766-9272

505-766-9287 (fax)

Attorneys for the Chapter 7 Trustee