

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re

FURR'S SUPERMARKETS, INC.,

Debtor.

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

FILED
12:00 MIDNIGHT

MAY 14 2001

DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

**MOTION FOR (i) ORDER EXTENDING EXCLUSIVE
PERIODS IN WHICH ONLY DEBTOR MAY FILE A PLAN
AND (ii) IF NECESSARY, A BRIDGE ORDER
EXTENDING EXCLUSIVITY UNTIL HEARING**

Furr's Supermarkets, Inc., debtor and debtor in possession (the "Debtor"), moves for an order under 11 U.S.C. § 1121(d) extending, to August 10, 2001 and October 9, 2001, respectfully, the 120-day and 180-day periods in which it has the exclusive right to file a plan. If a party objects to or requests a hearing on this Motion, the Debtor requests that the Court enter a bridge order extending exclusivity until the hearing.

1. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its properties as a debtor in possession under Bankruptcy Code §§ 1107(a) and 1108.

2. Bankruptcy Code § 1121(b) provides for an initial 120-day period after the

Petition Date (the "Plan Proposal Period"), in which the debtor has the exclusive right to file a reorganization plan. If the debtor files a plan during this initial period, Bankruptcy Code § 1121(c) provides an additional 60-day period (the "Solicitation Period" and, with the Plan Proposal Period, the "Exclusive Periods"), during which only the Debtor may file a plan, to permit the debtor to solicit acceptances of its plan without the distraction of competing plans. The Debtor's Plan Proposal Period will expire on June 8, 2001, and the Solicitation Period on August 8, 2001.

3. The purposes of Chapter 11 include, among other things, the negotiation, formulation, development, confirmation and consummation of a consensual plan. Section 1121's Exclusive Periods are intended to provide a debtor a full and fair opportunity to achieve these objectives, without the potential disruption of competing plans filed by non-debtor parties.

4. The Debtor's post-petition credit facility requires that it file a plan by August 10, 2001. For that and other reasons, this Court previously entered an order (Docket No. 326) extending the time to assume or reject virtually all unexpired leases to August 10, 2001, to allow the Debtor to consider each lease in connection with its plan. For the reasons set forth below, the Court should extend the Plan Proposal Period to the same date – August 10 – and the Solicitation Period to October 9, 2001, to enable the Debtor to achieve the purposes of Chapter 11.

BASIS FOR RELIEF

5. Under § 1121(d), this Court may extend the Exclusive Periods for cause.

That section provides that:

On request of a party in interest . . . and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.¹

6. Bankruptcy courts consider several factors in determining whether to extend the Code's exclusive periods, including: (i) the case's size and complexity; (ii) the necessity of sufficient time to permit the debtor to negotiate a plan and prepare adequate information; (iii) good faith progress toward reorganization; and similar factors.²

7. In applying these factors, the Court has maximum flexibility to review the particular facts and circumstances of each case.³

8. Here, the Debtor's business consists of more than 70 supermarkets located throughout New Mexico and western Texas. The Debtor is one of the largest private employers

¹ 11 U.S.C. § 1121(d).

² *In re Express One Int'l., Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (listing these and other factors).

³ *See In re Public Serv. Co.*, 88 B.R. 521, 534 (Bank. D.N.H. 1988) ("[T]he legislative intent . . . [is] to promote maximum flexibility . . ."); *First American Bank v. Southwest Gloves and Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986) (acknowledging flexibility that § 1121(d) provides); H.R. Rep. No. 95-595, at 232 (1978) ("[T]he bill allows the flexibility for individual cases that is unavailable today [under the former Bankruptcy Act].") *reprinted in* 1978 U.S.C.C.A.N. 5963, 6191.

in New Mexico. Its secured lenders include several sophisticated, national institutions. Secured and unsecured debt exceeds \$250 million. The case's size and complexity alone warrant the modest extensions requested here, especially in light of the post-petition credit facility's August 10 plan-filing deadline.

9. The Debtor has made significant progress in its Chapter 11 case since the Petition Date, including the following:

(a) Management has expended a tremendous amount of time and effort to stabilize the Debtor's business and handle the many time-consuming demands that inevitably accompany the commencement of a Chapter 11 case, including responding to myriad inquiries from vendors, taxing authorities, utilities, landlords, customers, professionals, the Creditors' Committee, and other parties in interest.

(b) The Debtor has been required to expend significant time and effort to respond to objections to the employment applications of its selected professionals.

(c) The Debtor timely filed its Schedules and Statement of Financial Affairs, consisting of more than 3,000 pages.

(d) The Debtor has begun a thorough review of its executory contracts and unexpired leases, to determine whether their rejection or assumption and assignment is in the best interests of its estate.

(e) After the Debtor's President and CEO announced his resignation early in this case, the Debtor expended significant effort to locate and engage new executive leadership. This new leadership has required time to become familiar with the Debtor's operations.

(f) The Debtor has engaged an investment advisor to review its strategic alternatives, including among other things, a potential sale of its business. The advisor has begun working, although the Court has not yet approved its employment application.

(g) The Debtor and its professionals have held several meetings with the Creditors' Committee and with individual Committee members, provided the Committee with

voluminous information (subject to a negotiated confidentiality agreement), and discussed at length business operations, management issues, reorganization alternatives, and other matters.

10. Based upon this significant progress, the Debtor and its professionals currently believe that that the Debtor will be able to file a plan by the August 10, 2001 deadline imposed by its secured lenders.

11. Thus, all three factors listed above are satisfied. The case is large and complex. The Debtor and its professionals will require an extension to complete their analysis of alternative proposals and formulate a plan. And the Debtor has made significant progress in its case to date. Under these circumstances, the Debtor submits that a brief extension of the Plan Proposal Period to August 10 – consistent with the deadline imposed by the Debtor's secured lenders and coterminous with the Court-approved extension of the deadline to assume or reject leases – is warranted, together with an extension of the Solicitation Period to October 9, 2001.

12. A premature termination of the Plan Proposal Period would deny the Debtor a meaningful opportunity to keep the creditors at the negotiating table and to propose a confirmable plan. The risk of multiple competing plans early in the case could lead to unwarranted confrontations and unnecessary administrative costs.

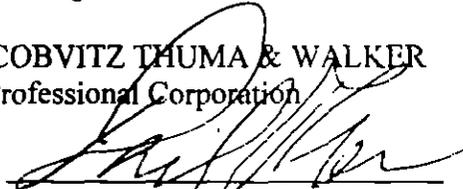
BRIDGE ORDER

13. Finally, the Debtor hopes that the relief requested herein will be uncontroversial. Nevertheless, if any party objects to or requests a hearing on the Motion, the

Debtor will promptly submit, and hereby requests that the Court enter, a bridge order extending the Plan Proposal Period until the Court can hold a hearing on the Motion, to preserve the *status quo* pending the hearing.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) extending (a) the Plan Proposal Period through and including August 10, 2001, and (b) the Solicitation Period through and including October 9, 2001, without prejudice to the Debtor's right to seek further extensions, and (ii) granting such other and further relief as is just and proper.

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