

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

**MOTION TO REJECT CERTAIN UNEXPIRED REAL ESTATE LEASES,  
SUBLEASES, AND EQUIPMENT LEASES**

Furr's Supermarkets, Inc. (the "Debtor") moves for an order under 11 U.S.C. § 365(a) approving its rejection of certain unexpired leases of nonresidential real property, subleases, and unexpired equipment leases. In support of this Motion, the Debtor states as follows:

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

2. The Debtor requests approval under 11 U.S.C. § 365(a) of its rejection of the following leases, the rejection to be effective as of the date of filing this Motion:

a. Five real property leases for grocery stores that the Debtor closed in May 2001 (the "Closed Stores"), more particularly described in Exhibit A hereto (the "Closed Store Leases");

b. All subleases for the Closed Stores with respect to which the Debtor is the sublessor, more particularly described in Exhibit B hereto (the "Closed Store Subleases"); and

c. Personal property leases for the leased equipment and other personal

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property located at the Closed Stores, which leases are more particularly described in Exhibit C hereto (the "Equipment Leases"); provided, however, that if any Equipment Lease also includes personal property located at stores other than the Closed Stores, the Debtor seeks to reject such Equipment Lease only with respect to the Closed Store personal property. If a lessor under such an Equipment Lease does not timely and validly object to this Motion, the Debtor will submit an order allowing the Debtor to reject the Equipment Lease with respect to Closed Store personal property only, with an appropriate reduction (either in accordance with the property schedule for the Closed Store or, if there is no separate schedule, pro rata) in the lease payment.

The Closed Store Leases, the Closed Store Subleases, and the Equipment Leases are together referred to as the "Leases." The Debtor is willing to surrender the leased property immediately.

3. The Leases are costly to maintain, unnecessary, and burdensome to the Debtor's ongoing operations and business, and constitute an unnecessary drain on the Debtor's cash resources and other assets.

4. The Debtor's aggregate rental obligation under the Leases is approximately \$370,000 per month. In addition, the Leases in general obligate the Debtor to insure, perform certain maintenance on, and incur other related charges associated with the leased properties. The Debtor has determined in its reasonable business judgment that these costs constitute a substantial and unnecessary drain on the Debtor's cash resources and other assets. By rejecting the Leases now, the Debtor will avoid unnecessary administrative charges that provide no benefit to the estate, creditors, or interest holders.

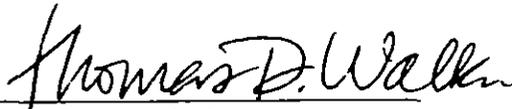
5. For these reasons, the rejection of the Leases is in the best interests of the Debtor's estate, creditors and interest holders.

6. Under Bankruptcy Code § 365(a), a debtor "subject to the court's approval, may assume or reject an executory contract or an unexpired lease." Most courts hold that a debtor's decision whether to assume or reject a lease is subject to review under the business judgment standard. A debtor satisfies this standard if it shows in its reasonable business judgment that rejection will benefit the estate. See In re Mile Hi Metal Systems, Inc., 899 F.2d 887, 896 n.13 (10th Cir. 1990) (Seymour, J. concurring) (so-called "business judgment" test applies to ordinary executory contracts); In re Federated Dept. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) ("Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases"); Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985) ("Under the business judgment test, a court should approve a debtor's proposed rejection if such rejection will benefit the estate.") (citation omitted). If a debtor has exercised its business judgment reasonably, the court should approve the proposed assumption or rejection. Sharon Steel Corp. v. National Fuel Gas Distribution, 872 F.2d 36, 39-40 (3d Cir. 1989).

WHEREFORE, the Debtor respectfully requests that the Court enter an order approving the Debtor's rejection of the Leases, effective as of the date of filing the Motion, and granting all other just and proper relief.

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This certifies that on June 25, 2001,  
a copy of this Motion was mailed by  
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