

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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In re:

FURR'S SUPERMARKETS, INC.,  
Debtor.

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

JUN 29 2001

DROP  
United States Bankruptcy Court  
Albuquerque, New Mexico

**MOTION TO REJECT LICENSE AGREEMENT  
WITH OMI INTERNATIONAL, INC.**

Furr's Supermarkets, Inc. (the "Debtor") moves for an order under 11 U.S.C. § 365(a) approving its rejection of a license agreement with OMI International, Inc. ("OMI"). 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 executory contract:

a. That certain License Agreement entered into on April 14, 1998 between the Debtor and OMI (the "License Agreement"), for certain software systems and Licensed Program Materials (as defined in the License Agreement), including the Agreement for Maintenance of Licensed Program Materials between Debtor and OMI also dated April 14, 1998.

4 Debtor requests that the rejection of the License Agreement be effective as of the date of filing this Motion.

5. The License Agreement is an executory contract.

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6. The License Agreement is costly to maintain, unnecessary, and burdensome to the Debtor's ongoing operations and business, and constitutes an unnecessary drain on the Debtor's cash resources and other assets.

7. The Debtor's aggregate financial obligations under the License Agreement are substantial. 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 License Agreement now, the Debtor will avoid unnecessary administrative charges that provide no benefit to the estate, creditors, or interest holders.

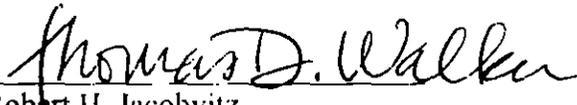
8. For these reasons, the rejection of the License Agreement is in the best interests of the Debtor's estate, creditors and interest holders.

9. 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 License Agreement, effective as of the date of filing this Motion, and granting all other just and proper relief.

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This certifies that on June 29, 2001,  
a copy of this Motion was mailed by  
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