

11-01-10779-1 PM 1:26
UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO
11-01-10779-1 PM 1:26

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

**DEBTOR'S MOTION FOR ORDER DIRECTING PINNACLE LOGISTICS, INC.
AND COUNTRYWIDE LOGISTICS, INC. TO RELEASE INVENTORY, AND
FOR SANCTIONS**

Furr's Supermarkets, Inc., debtor-in-possession (the "Debtor"), asks the Court for an order directing Pinnacle Logistics, Inc. ("Pinnacle") and Countrywide Logistics, Inc. ("Countrywide") to release certain of the Debtor's inventory to the Debtor, and to sanction *Pinnacle and Countrywide for their conduct, and in support hereof states:*

1. On February 8, 2001 (the "Petition Date"), the Debtor filed with this Court its voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its businesses and manage its properties as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Effective as of September 23, 1998, Furr's and Pinnacle entered into a certain Warehousing and Distribution Agreement, pursuant to which Pinnacle agreed to operate the Debtor's El Paso Distribution Center (the "Distribution Center") for the Debtor.

3. Effective as of March 26, 1999, Furr's and Countrywide entered into a

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certain Transportation Services Agreement.

4. The Debtor has filed a motion to reject the above-referenced contracts.

5. On or about July 16, 2001, the Debtor gave instructions to Pinnacle and Countrywide to load the last of the Debtor's inventory stored at the Distribution Center and ship the same to Fleming Companies, Inc.'s ("Fleming's") Lubbock warehouse.

6. Among the inventory loaded on July 16, 2001 were 20 trailers of inventory loaded onto Countrywide trailers, and four trailers of inventory loaded onto Fleming trailers.

7. After the loading was completed, the Debtor's representatives left the Distribution Center, thinking that the last of the Debtor's inventory was on its way to the Fleming warehouse in Lubbock, and that the Distribution Center could now be closed.

8. Instead, the Debtor has recently learned that after the Debtor's personnel left the Distribution Center on July 16, 2001, Countrywide drove its 20 trailers around to the back of the Distribution Center and parked them, rather than haul the trailers to Lubbock. The 20 trailers remain there to this day, and Pinnacle and Countrywide refuse to release to the Debtor the inventory that sits in the trailers.

9. Furthermore, the Debtor recently learned that on July 16, 2001 Pinnacle refused to let the four Fleming trucks and trailers leave the Distribution Center, and forced the Fleming drivers to agree to have the trailers unloaded, and the inventory put back into the Distribution Center. The unloaded inventory remains at the Distribution Center, and Pinnacle refuses to release it to the Debtor.

10. The inventory in the trailers is exposed to the heat, rain, and other elements.

and is being damaged.

11. The actions of Pinnacle and Countrywide constitute conversion and an intentional violation of the automatic stay imposed under 11 U.S.C. §362(a)(3).

12. The pretext for Pinnacle's and Countrywide's actions is that the Debtor has not paid the amounts due post-petition under the contracts between the parties. There are at least three responses to that. First, even if true, that would not excuse conversion and violating the automatic stay. Second, the Debtor has paid all of such amounts due; the only unpaid charges are for items the Debtor believes represent pre-petition breach of contract damages, not post-petition administrative claims. Third, the latest replacement lien order entered by this Court was supposed to protect Pinnacle and Countrywide to the extent they

have valid liens, rendering such conduct unnecessary, whereas if Pinnacle and Countrywide do not have valid liens, they have no colorable excuse for their conduct.

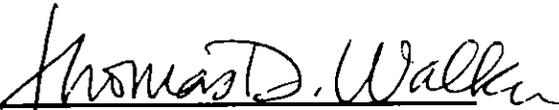
13. The Court should enter an order directing Pinnacle and Countrywide to release the inventory to the Debtor and sanctioning Pinnacle and Countrywide for their conduct, while reserving for a later date any award of additional damages suffered because the inventory has been improperly stored since July 16, 2001.

14. Pinnacle and Countrywide oppose the relief requested in this Motion.

WHEREFORE, the Debtor requests that the Court grant the relief requested in this Motion, and for all other just and proper relief.

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