

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

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In Re:

FURR'S SUPERMARKETS, INC.,

U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

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

Debtor.

UFCW, LOCAL 1564'S OBJECTION TO MOTION FOR (i) APPROVAL OF WIND-DOWN BUDGET, (ii) APPROVAL OF CASH COLLATERAL STIPULATION, (iii) AUTHORITY TO APPLY FUNDS AND OPERATE IN ACCORDANCE WITH THE WIND-DOWN BUDGET WITHOUT FURTHER COURT ORDER, (iv) APPROVAL OF EMPLOYEE RETENTION PLAN, (v) AN ORDER DIRECTING DISBURSEMENT OF FLEMING SALE PROCEEDS AND OTHER DEBTOR PROPERTY, (vi) APPROVING THE SETTLEMENT OF ALL ESTATE CLAIMS AGAINST THE SECURED LENDERS, AND (vii) ALLOWING CLAIMS OF SECURED LENDERS

U.F.C.W., Local 1564, the exclusive collective bargaining representative for several thousand of the Debtor's employees, hereby objects to the Debtor's Motion for (i) Approval of Wind-Down Budget, (ii) Approval of Cash Collateral Stipulation, (iii) Authority to Apply Funds and Operate in Accordance with the Wind-Down Budget Without Further Court Order, (iv) Approval of Employee Retention Plan, (v) An Order Directing Disbursement of Fleming Sale Proceeds and Other Debtor Property, (vi) Approving the Settlement of All Estate Claims Against the Secured Lenders, and (vii) Allowing Claims of Secured Lenders, as follows:

1. The collective bargaining agreement between U.F.C.W., Local 1564 and the Debtor has not been rejected. As such, the collective bargaining agreement is a de facto retention agreement approved by operation of law. 11 U.S.C. §1113.

All claims for post-petition wages, vacation pay, sick leave, benefits and severance pay are administrative claims. The Debtor has failed to provide information requested by U.F.C.W., Local 1564 necessary to calculate the amounts due in those categories in violation

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of 29 U.S.C. §158(a)(5). Without that information, U.F.C.W., Local 1564 is unable to determine what disputes exist as to the amounts due and if sufficient monies are provided for in the wind-down budget to pay all the amounts claimed due. The motion does not adequately or specifically address the amount necessary to pay for this portion of the wind-down budget.

U.F.C.W., Local 1564 will be filing unfair labor practices with the National Labor Relations Board regarding the Debtor's refusal to engage in "effects bargaining" over its shutdown, which would result in at least two weeks pay being due each bargaining unit employee, as an administrative claim. No provision has been made for payment of this amount in the wind-down budget.

Pursuant to 11 U.S.C. §506(c) the Debtor and its agents have a fiduciary obligation to secure from an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of such property to the extent of any benefit to the holder of such claim, when necessary. The secured creditors have benefitted from the bargaining unit employees' labor in that the stores could have not operated without store employees. As such the secured claims would have been severely weakened and the investments would have suffered if there were insufficient employees to operate the stores. Consequently under 11 U.S.C §506(c) it is appropriate to require that these claims be paid by secured claims. Debtor's failure to act to protect its employees represented by U.F.C.W., Local 1564, subjects Debtor and its agents to a breach of fiduciary duty claim, which too would be an administrative claim. Only the Trustee is permitted to bring a motion under 11 U.S.C. §506(c). Debtor should have requested the Trustee to do so. Hartford Underwriters Insurance Company v. Union Planters Bank, 120 S. Ct. 194, 1950 (2000). This administrative claim may well exceed the amounts mentioned above.

2. The Debtor has deducted union dues from the employees since the filing of the Petition, which it holds in trust, but has failed to account for and remit said dues for the month of August, 2001 to U.F.C.W., Local 1564 or provide for their accounting and payment in the wind-down budget.

3. The Debtor has failed to provide monies for the payment of damages (back pay, benefits and interest) due for several grievances regarding employee terminations occurring since the time of the filing of the Petition. The Debtor has refused without justification to proceed to arbitration on these grievances as required by the collective bargaining agreement, which now requires U.F.C.W., Local 1564 to file adversary proceedings in this Court to compel arbitration. Such conduct by the Debtor constitutes bad faith so as to entitle U.F.C.W., Local 1564 to reasonable attorney's fees in such action. See IUPIW v. Western Industrial Maintenance, 707 F.2d 425 (9th Cir. 1983). This too would be an administrative claim. No provision has been made for payment of these amounts (damages and attorney's fees) in the wind-down budget.

For all these reasons, it is respectfully submitted that the Debtor's motion for (i) approval of wind-down budget, (ii) approval of cash collateral stipulation, (iii) authority to apply funds and operate in accordance with the wind-down budget without further court order, (iv) approval of employee retention plan, (v) an order directing disbursement of Fleming sale proceeds and other debtor property, (vi) approving the settlement of all estate claims against the secured lenders, and (vii) allowing claims of secured lenders, should be denied without prejudice. The motion should not be reconsidered until such time as the Debtor has provided the requested and necessary information to U.F.C.W., Local 1564, other creditors in interest and this Court. Only then can the Court rule, upon whether the amounts provided for in the wind-down budget by the

Debtor are adequate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent via first-class United States mail on this 29th day of August, 2001. to all parties listed below::

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