

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FILED
OFFICE OF THE CLERK

01 OCT -1 PM 1:06

In re:

FURR'S SUPERMARKETS, INC.,

U.S. DISTRICT COURT
ALBUQUERQUE, N.M.
No. 11-01-10779-SA

Debtor,

**OBJECTION OF FURRS 4, 5, 7 & 9 LLCs
TO DEBTOR'S MOTION TO USE CASH COLLATERAL**

COME NOW Furrs 4 LLC, Furrs 5 LLC, Furrs 7 LLC and Furrs 9 LLC (collectively, "the Objectors"), by and through their attorneys of record, FAIRFIELD, FARROW, FLOWERS, & STROTZ, P.C. (John E. Farrow) and hereby object to the Debtor's Motion to Use Cash Collateral (the Motion) and as grounds would show the Court as follows:

1. The Objectors were the Lessors under separate leases for non-residential real property with the Debtor (collectively, "the Rejected Leases") at the following locations, which leases have been rejected by the Debtor as of the rejection dates below, as more particularly described as follows:

Lessor	Store No.	Location	Rejection Date
Furrs 4	905	205 Highway 70 W, Ruidoso, New Mexico	August 31, 2001
Furrs 5	946	6910 N. Mesa, El Paso, Texas	August 20, 2001
Furrs 7	944	115 Americas Ave, El Paso, Texas	August 20, 2001
Furrs 9	938	1590 George Dieter, El Paso, Texas	August 31, 2001

2. Since the filing of the petition, and up to the rejection dates, the Debtor has failed to pay post-petition rent on two of the Rejected Leases, and has also failed to pay real estate property taxes that have accrued and become due and payable on each of the properties covered by the Rejected Leases, all as required

1133

pursuant to the terms of the Rejected Leases.

3. As more specifically described in a separate Motion filed herein by the Objectors to compel the Debtor to immediately pay accrued post-petition rent and taxes, the Debtor is indebted to the Objectors for such post-petition rent and taxes in the amount of at least \$303,191.52 ("the Objector's Claim").

4. The Debtor's Motion seeks authority to pay post-petition expenses such as rent, salaries and professional fees. Nevertheless, such expenses constitute similar expenses to those making up the Objectors' Claim and are of equal priority to the Objectors' Claim under 11 USC 503(B)(1).

5. Allowing payment of the claims as requested by the Debtor in the Motion without payment of the Objectors' Claim would amount to the granting of an impermissible preference of certain administrative claims over others of equal priority.

6. Said Objectors' Claim for post-petition rent and property taxes constitute valid administrative expenses allowable under sections 503(b) and 507(a)(1) of the Code.

7. Further, the Debtor has failed to provide for such expenses as the Objectors' Claim in either its Post-Closing Operating Budget or its proposed Wind-Down Budget.

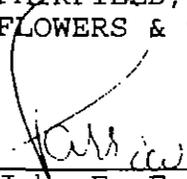
8. Nevertheless, the Wind-Down Budget does propose to pay certain administrative expenses, but those are apparently limited to post-petition wages, workers' compensation claims, trade credit, unpaid professional fees, management retention fees and other employee-related expenses.

9. Nowhere in the Debtor's proposed Post-Closing Operating

Budget or Wind-Down Budget does there appear to be any provision for payment of the post-petition administrative expenses incurred by the Debtor with respect to its leased properties, which undeniably constituted the assets of the Debtor from which all of the above claims flow.

WHEREFORE, the Objectors pray that the Debtor's Motion For Use of Cash Collateral be denied, or in the alternative, that provision be made for payment of the valid post-petition claims of the Objectors for rent and taxes and for such other and further relief as the Court may deem just and proper.

FAIRFIELD, FARROW,
FLOWERS & STROTZ, P.C.



John E. Farrow, Esq.
Attorney for Furrs 4,5,7,9 LLC
P.O. Box 35400
Albuquerque, NM 87176
(505) 881-8300

I **HEREBY CERTIFY** that a true copy of the foregoing pleading was mailed to the following counsel this 28 day of September, 2001:

JACOBVITZ, THUMA & WALKER, P.C.
Robert H. Jacobvitz, David T. Thuma
500 Marquette NW, Suite 650
Albuquerque, New Mexico 87102

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Jay M. Goffman, Alan J. Carr
Four Times Square
New York, New York 10036-6522

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Richard Levin, Peter W. Clapp, Stephen J
Lubben
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071-3144



John E. Farrow, Esq.