

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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

IN RE:

FURR'S SUPERMARKETS, INC.,
a Delaware corporation

Debtor.

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Case No. 11-01-10779-SA

**OBJECTION TO DEBTOR'S MOTION TO (i) ASSUME AND
ASSIGN CERTAIN UNEXPIRED REAL ESTATE LEASES AND
ASSOCIATED SUBLEASE, AND (ii) SELL CERTAIN PERSONAL
PROPERTY TO SAFEWAY INC. (STORES 877, 893, AND 909)**

TO THE HONORABLE JAMES S. STARZINSKY, UNITED STATES BANKRUPTCY
JUDGE:

Fleming Companies, Inc., an Oklahoma corporation ("Fleming"), a Party-In-Interest in the above Chapter 11 case, hereby objects to *Debtor's Motion to (i) Assume and Assign Certain Unexpired Real Estate Leases and Associated Sublease, and (ii) Sell Certain Personal Property to Safeway Inc. (Stores 877, 893, and 909)* on the following grounds:

1. On February 8, 2001 the Debtor filed a voluntary petition in this Court under Chapter 11 of Title 11 of the United States Code.
2. The Debtor and Fleming entered into an Asset Purchase Agreement dated as of June 25, 2001, as amended by the First Amendment to Asset Purchase Agreement dated August 2, 2001, the Second Amendment to Asset Purchase Agreement dated August 23, 2001, and the Third Amendment to Asset Purchase Agreement dated August 24, 2001 (as amended, the "Purchase Agreement"), whereby the Debtor agreed to sell, and Fleming agreed to buy, the assets of certain Stores operated by the Debtor. Pursuant to the Third Amendment to the Purchase Agreement, Fleming agreed to acquire all Inventory and all Tangible Personal Property

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located in Store 893 in consideration for the right to refuse to purchase Store 893 as otherwise required by the Purchase Agreement. The purchase price to be paid pursuant to the Purchase Agreement was not changed as a result of the Third Amendment.

3. Tangible Personal Property is defined in the Purchase Agreement as, among other things, “all furniture, fixtures, equipment, machinery, materials, and spare and replacement items therefor together with all warranties existing for the benefit of [Debtor]” located at any Store owned or leased by Debtor.

4. Fleming’s acquisition of, among other things, the Tangible Personal Property located in Store 893 (the “Store 893 Personal Property”) was evidenced by a Bill of Sale between the Debtor and Fleming dated August 31, 2001 for the amount of the Purchase Price paid by Fleming to the Debtor for all the assets of the Stores that Fleming purchased in their entirety and the Inventory and Tangible Personal Property of several additional Stores, including 893.

5. The Bill of Sale and the Third Amendment to the Purchase Agreement unambiguously state the intent of the Debtor and Fleming concerning the Store 893 Personal Property. By *Debtor’s Motion to (i) Assume and Assign Certain Unexpired Real Estate Leases and Associated Sublease, and (ii) Sell Certain Personal Property to Safeway Inc. (Stores 877, 893, and 909)*, the Debtor requests this Court to approve the sale of the Store 893 Personal Property to Safeway Inc. (“Safeway”). However, the Debtor cannot sell property that it no longer owns. The Court’s approval of the sale of the Store 893 Personal Property to Safeway will result in the Debtor being compensated twice for the same property and Fleming being denied the benefit of its bargain with the Debtor. This result is contrary to the Debtor’s assertion in its motion that this proposed sale is “fair, reasonable, and in the best interests of the estate.”

WHEREFORE, PREMISES CONSIDERED, Fleming requests that this Court deny the *Debtor’s Motion to (i) Assume and Assign Certain Unexpired Real Estate Leases and Associated Sublease, and (ii) Sell Certain Personal Property to Safeway Inc. (Stores 877, 893, and 909)* as it relates to the sale of the Store 893 Personal Property, or alternatively, condition the relief granted

therein to address the objections herein raised, award damages to Fleming, and enter such other and further orders as are just.

Respectfully submitted,

McAFEE & TAFT, A Professional Corporation

By: 
Louis J. Price
Oklahoma State Bar No. 7299

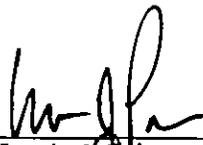
Richard J. Salamy
Oklahoma State Bar No. 18176

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Counsel for Fleming Companies, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of October, 2001, a true and correct copy of the foregoing *Objection to Debtor's Motion to (i) Assume and Assign Certain Unexpired Real Estate Leases and Associated Sublease, and (ii) Sell Certain Personal Property to Safeway Inc. (Stores 877, 893, and 909)* was mailed overnight priority mail to the parties on the list below.

By: 
Louis J. Price

United States Trustee:

Office of the U.S. Trustee
P. O. Box 608
Albuquerque, NM 87103

Debtor:

Jacobvitz, Thuma & Walker, P.C.
500 Marquette NW, Suite 350
Albuquerque, NM 87102

Attention: David Thuma, Esq.

Safeway, Inc.:

Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588

Attention: Denise M. Roman, Esq.

Andrews & Kurth
Mayor, Day, Caldwell & Keeton, L.L.P.
700 Louisiana, Suite 1900
Houston, TX 77002-2278

Attention: Jennifer M. Gore