

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

FILED
12:00 MIDNIGHT
NOV 09 2001
DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

In Re:

FURR'S SUPERMARKETS, INC.,

Debtor.

No. 11 - 01 - 10779- SA

OBJECTION OF W & W PROPERTIES TO THIRD MOTION
TO SELL PROPERTY FREE AND CLEAR OF LIENS AND INTERESTS,
AND FOR ORDER GRANTING THE DEBTOR ACCESS TO CERTAIN FORMER STORES

W & W Properties, a creditor and party in interest in the above styled and numbered case, through its counsel of record, Butt Thornton & Baehr PC, hereby objects to the Debtor's Third Motion to Sell Property Free and Clear of Liens and Interests, and For Order Granting the Debtor Access to Certain Former Stores, as follows:

W & W Properties is the Lessor under a Shopping Center Lease dated December 29, 1972, between FHM Peterson and Safeway Stores, Incorporated, as modified by Lease Modification Agreement dated February 12, 1973, Lease Modification Agreement dated December 13, 1973, Lease Modification Agreement dated March 18, 1974, Lease Modification Agreement dated May 28, 1974, Fifth Shopping Center Lease Modification Agreement dated January 24, 1980, Sixth Shopping Center Lease Modification Agreement dated November 24, 1980, Seventh Shopping Center Lease Modification Agreement dated September 10, 1982, Agreement to Clarify Lease Term dated January 21, 1983, Letter Clarification Agreement dated January 21, 1983 and Letter Agreement dated November 3, 1986, as assigned to Furr's, Inc. by Assignment and Assumption Agreement dated October 29, 1987, and assigned to Furr's

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Supermarkets, Inc., by Assignment and Assumption of Real Property Lease dated March 11, 1991. W & W Properties is also the lessor under a Ground Lease dated March 26, 1981 between Martin B. Weinberg Individually and as trustee for Edith L. Rehnberg and Safeway Stores Inc., and assigned to Furr's Supermarkets, Inc.

The leased premises are located at 108 Juan Tabo, N.E., Albuquerque, New Mexico (the northeast corner of Juan Tabo and Central Franklin Plaza). On information and belief, the supermarket operated at the leased premises was known as debtor's store #880. Debtor filed a motion to reject the real property lease on August 17, 2001 and an Order permitting rejection was entered on September 6, 2001.

In its Motion, Debtor proposes to sell alleged personal property located in the store #880, "such as shelves, refrigeration units, bakery equipment and fixtures, deli equipment, meat department equipment, etc." Motion at pp 2-3, paragraph 11.

OBJECTIONS OF W & W PROPERTIES

1. Some of the items Debtor seeks to sell constitute fixtures rather than personal property of the Debtor. See, *Southwestern Public Service Company v. Chaves County*; 85 N.M. 313, 316-17, 512 P12d 73, 76-77 (1973).
2. Due to the age of the premises and fixtures, there is asbestos present, but it is presently encapsulated in a non-friable state. Sale and removal of the fixtures will cause an asbestos contamination problem requiring abatement.
3. Due to the presence of asbestos, the fixtures have little, if any, value to the estate.
4. Removal of the fixtures will cause damage to the premises and harm to W & W Properties' interest in the premises and fixtures.

5. W & W Properties is owed amounts for rent, taxes and common area charges both for pre-petition defaults and for the post-petition/pre-rejection time periods.

6. W & W Properties has a landlord's lien against the property left by Debtor in the store premises when Debtor rejected the real property lease pursuant to N.M.Stat. Ann. 1978, § 48-3-5.

7. W & W is entitled to adequate protection under 11 U.S.C. § 365(e).

Wherefore, W & W Properties respectfully requests that the Court prohibit the sale of the property located at Debtor's former store #880 or condition the sale of the property on the provision of adequate protection.

BUTT THORNTON & BAEHR PC

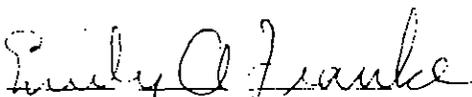
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I hereby certify that I faxed a true copy of the foregoing pleading on this 12th day of November, 2001, and mailed a copy on the 13th day of November, 2001, to the following:

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