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U.S. BANKRUPTCY COURT
ALBUQUERQUE N.M.

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:)
)
FURR'S SUPERMARKETS, INC.,) Case No. 07-01-10779-SA
a Delaware corporation,) (Chapter 7)
)
Debtor.)

**FLEMING COMPANIES' OBJECTION TO CHAPTER 7 TRUSTEE'S
MOTION TO APPROVE SETTLEMENT WITH SECURED LENDERS**

Fleming Companies, Inc. ("Fleming") objects to the Chapter 7 Trustee's Motion to Approve Settlement with Secured Lenders (the "Motion") filed on or about February 11, 2002 and in support of that objection, would show the court as follows:

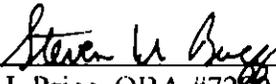
1. In the Motion, the Chapter 7 Trustee seeks approval of a Stipulation and Consent Order Approving Compromise and Settlement Between the Trustee on Behalf of the Estate, Heller Financial, Inc., Bank of America, N.A., Fleet Capital Corporation and Metropolitan Life Insurance Company (the "Stipulation"). Fleming has only been provided a draft of the Stipulation dated March 4, 2002, and not a final, signed copy of the Stipulation. Fleming reserves the right to object to the Stipulation to the extent that any changes are made to the March 4, 2002 draft.

2. One of the issues addressed in the Stipulation is the Distribution Center Lease for the food distribution center on Railroad Drive in El Paso, Texas. Fleming assigned its interest in the Distribution Lease to the Debtor, Furr's Supermarkets, Inc. on October 19, 1998. Pursuant to the terms of the Lease, the tenant may assign the Lease if it remains liable for the obligations of the tenant thereunder. Accordingly, Fleming has an interest in the Debtor's treatment of that lease.

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3. Paragraph 10 of the proposed Stipulation provides that the Lenders “may, at their option” pay certain carrying charges, including rent and taxes for the facility. Paragraph 10 further provides that Lenders “shall pay all Court-required carrying costs that are allowable as administrative claims against the Estate.” The implication of this paragraph is that the Lenders are not required to pay rent, taxes and other obligations that might accrue under the Distribution Center Lease before it is assumed or rejected unless such claims are approved by the Court as administrative claims. This Stipulation is contrary to the requirements of the Bankruptcy Code. Section 365(d)(3) requires the trustee to “timely perform” all the obligations of the Debtor under an unexpired lease of non-residential real property until the lease is assumed or rejected, “notwithstanding Section 503(b)(1) of this title.” Section 365(d)(3) requires the Debtor to timely perform whether or not lease obligations ultimately become allowed administrative claims. The court should reject the Stipulation unless the Stipulation is modified to require the Lenders to allow their funds to be used by the Trustee to timely perform all of the Debtor’s obligations under the Distribution Center Lease as required by Section 365 until that lease is assumed or rejected. This should include all rent and taxes that may accrue under the Lease, even if payment is not yet due.

WHEREFORE, Fleming objects to the Motion and urges the court to reject the Stipulation unless the Stipulation is modified to require the Lenders to allow their funds to be used by the Trustee to timely perform all obligations of the Debtor under the Distribution Center Lease until that Lease is assumed or rejected.



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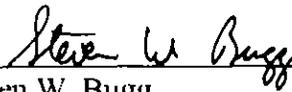
CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2002, a true and correct copy of the above and foregoing instrument was served by facsimile to the following:

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