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U.S. BANKRUPTCY COURT  
ALBUQUERQUE N.M.

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

In re

FURR'S SUPERMARKETS, INC.

Debtor.

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§  
§  
§  
§

Case No. 11-01-10779  
Chapter 11  
Hearing Set: April 3, 2001  
1:30 p.m.

**OBJECTION OF LSF BASSETT, L.P. TO  
DEBTOR'S MOTION FOR ORDER EXTENDING TIME WITHIN WHICH  
DEBTOR MAY ASSUME OR REJECT UNEXPIRED LEASES OF  
NONRESIDENTIAL REAL PROPERTY**

LSF Bassett, L.P., a creditor and party-in-interest in the above-styled and numbered bankruptcy case, hereby files this its "Objection to Debtor's Motion for Order Extending Time Within Which Debtor May Assume or Reject Unexpired Leases of Nonresidential Real Property", as follows.

1. Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code on February 8, 2001. Debtor continues in possession of its property and operation of its business as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. LSF Bassett, L.P. is the lessor under an unexpired lease on non-residential real property (the "Lease") known as Furr's Lease No. 370, located in the Bassett Shopping Center, 1117 Geronimo, El Paso, Texas.

3. Debtor filed its "Motion for Order Extending Time Within Which Debtor May Assume or Reject Unexpired Leases of Nonresidential Real Property" on or about March 1, 2001, in which the Debtor seeks an extension of time to assume or reject a number of unexpired leases of nonresidential real property, including the Lease. In said motion, Debtor requests that this Court extend the deadline under 11 U.S.C. § 365(d)(4) by which Debtor must assume or reject unexpired nonresidential leases until August 10, 2001.

4. LSF Bassett, L.P. objects to such extension because the Debtor has failed to demonstrate sufficient cause for the extension.

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5. 11 U.S.C. § 365(d)(4) provides: "Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor."

6. The background for 11 U.S.C. § 365(d)(4) was discussed at length by the Ninth Circuit Court of Appeals in *In re Southwest Aircraft Services, Inc.*, 831 F.2d 848, 851 (9th Cir. 1987), as follows:

"Before 1984, debtors in Chapter 11 reorganizations had no fixed deadline to assume or reject unexpired leases, although any party could request the court to fix a time limit....Congress became concerned about the practical consequences of Chapter 11 filings by tenants of shopping centers. It was particularly concerned that mall operators were facing periods of extended vacancies, that would last until such time as the bankruptcy courts would finally decide to take the initiative and force debtors to make a choice whether to assume or reject the leases. It was also concerned about the effects the extended vacancies were having on other tenants. See 130 Cong. Rec. S8891, S8894-95 (daily ed. June 29, 1984) (statement of Sen. Hatch), reprinted in 1984 U.S. Code Cong. & Admin. News 576, 590, 598-99. To address this problem, Congress added two provisions dealing specifically with nonresidential leases in Chapter 11 proceedings. Subsection (d)(3) requires the debtor to perform all lease obligations while deciding whether to assume, but permits the court to delay the debtor's performance during the first 60 days after filing for reorganization. Subsection (d)(4) establishes the 60-day deadline for assumption or rejection, and imposes on the debtor the burden of petitioning the bankruptcy court for a change in the deadline. According to the legislative history, the so-called Shopping Center Amendments were expressly intended to lessen the problems caused by extended vacancies and partial operation of tenant space by requiring that the trustee decide whether to assume or reject nonresidential real property leases within 60 days after the order for relief in a case under any chapter. This time period could be extended by the court for cause, such as in exceptional cases involving large numbers of leases."

7. It is now well-established that the primary purpose of section 365(d)(4) is to protect lessors from delay and uncertainty by forcing a trustee or a debtor in possession to decide quickly whether to assume unexpired leases. *Matter of American Healthcare Management, Inc.*, 900 F.2d 827, 829 (5th Cir. 1990).

8. In determining whether cause for extending the time within which the debtor must assume or reject under § 365(d)(4) exists, courts generally examine a number of factors, including: (1) whether the lease is the primary asset of the debtor; (2) whether the lessor has a reversionary interest in the building built by the debtor on the landlord's land; (3) whether the debtor has had time to intelligently appraise its financial situation and potential value of its assets in terms of the formulation of a plan; (4) whether the lessor continues to receive rental payments and whether the debtor fails to pay the rent reserved in the lease; (5) whether the lessor will be damaged beyond compensation available under the Bankruptcy Code due to the debtor's continued occupation; (6) whether the case is exceptionally complex and involves a large number

of leases; (7) whether need exists for judicial determination of whether the lease is a disguised security agreement; (8) whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so; and (9) any other factors bearing on whether the debtor has had a reasonable amount of time to decide to assume or reject the lease. *In re Service Merchandise Co., Inc.*, 256 B.R. 744, 748 (Bankr.M.D.Tenn. 2000); *Escondido Mission Village L.P. v. Best Products Co., Inc.*, 137 B.R. 114, 117 (S.D.N.Y. 1992).

9. Where the Debtor's motion for extension of time fails to address the factors necessary to properly demonstrate cause required under § 365(d)(4), the motion should be denied. *In re Columbus One Parcel Service, Inc.*, 138 B.R. 194, 195 (Bankr.S.D.Ohio 1992).

10. In the present case, the Debtor fails to satisfactorily demonstrate cause for its requested four-month extension of time in which to assume or reject its nonresidential leases. Rather, the Debtor premises its request only on its contention that it has a large number of leases to evaluate, and arbitrarily requests that the deadline be extended to August 10, 2001, without demonstrating whether the Debtor will even need the full four month extension to evaluate its leases.

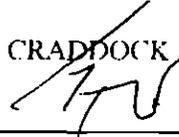
11. Accordingly, LSF Bassett, L.P., requests that this Court deny the Debtor's motion, or alternatively, grant the extension of time to assume or reject unexpired leases of nonresidential real property on the Debtor's timely performance of post-petition obligations under said leases as required by 11 U.S.C. § 365(d)(3).

WHEREFORE, LSF Bassett, L.P. requests that this Court deny the Debtor's Motion for Order Extending Time Within Which Debtor May Assume or Reject Unexpired Leases of Nonresidential Real Property, or alternatively, condition the extension on the Debtor's timely performance of post-petition obligations under said leases, and enter such other and further orders as are just.

DATED: March 15, 2001

Respectfully Submitted.

BUSH CRADDOCK & RENEKER, L.L.P.

By: 

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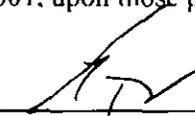
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ATTORNEYS FOR LSF BASSETT, L.P.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Application has been served by first class United States mail, on March 15, 2001, upon those parties on the attached service list.

  
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Kevin T. White

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