

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED  
01 MAR 23 9:00 AM  
BANKRUPTCY COURT  
ALBUQUERQUE N.M.

IN RE: §  
§  
FURR'S SUPERMARKETS, INC. §  
§  
§

CASE NO. 11-01-10779-SAM  
Chapter 11

OBJECTION TO MOTION OF THE DEBTOR FOR AN ORDER EXTENDING TIME  
TO ASSUME OR REJECT UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASES

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Movant, Cruz Alta Plaza, Ltd., respectfully moves this Court to deny the Motion of the Debtor for an Order Extending Time to Assume or Reject Unexpired Nonresidential Real Property Leases to August 10, 2001 ("Debtor's Motion"), and in support of this Motion would respectfully show this Court as follows:

I.

1. Movant is the lessor under the lease dated March 7, 1978, as amended (the "Taos Lease"), concerning Debtor's store located in Taos, New Mexico.

2. On February 2, 2001, the Debtor commenced this case under Chapter 11 of the United States Bankruptcy Code. The Debtor continues to operate its business and manage its properties as debtor in possession. On or about March 1, 2001, the Debtor filed Debtor's Motion. Objections to Debtor's Motion are to be filed by March 26, 2001.

3. The decision to grant or deny a motion for an extension of time is generally within the discretion of the Court. *In re Burger Boyes, Inc.* 94 F.3d 755, 760 (2<sup>nd</sup> Cir. 1996). Several factors are relevant when determining whether cause exists for extending the sixty day period for Lessee to assume or reject the Taos Lease. These factors include (1) whether the lease

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NONRESIDENTIAL REAL PROPERTY LEASES TO AUGUST 10, 2001

is a primary asset central to reorganization; (2) whether debtor needs additional time to act intelligently in making the judgment to assume or reject; (3) whether the lease is one of a number of business properties whose acceptance or rejection requires additional time for study and determination; (4) whether debtor has complied with its post petition obligations under the lease; and (5) whether debtor's continued possession of the premises affects lessor. *In re Perfectlite Co.*, 116 B.R. 84 (Bankr. N.D. Ohio 1990). An additional factor to be considered is whether the debtor's continued occupation of the leased premises could damage the lessor beyond the compensation available under the Bankruptcy Code. *In re Burger*, 94 F.3d at 761.

4. Lessor objects to allowing Debtor an additional five months to accept or reject the Taos Lease. The Taos Lease is not Debtor's primary asset and is not central to its reorganization. Given Debtor's long-term operating history of the Taos store, Debtor does not require additional time to act in making the judgment to assume or reject the Taos Lease. Debtor is in default under the Taos Lease for failure to pay, pursuant to Section 2(b) of the Taos Lease, percentage rent that accrued post petition and became due and payable under the Taos Lease on February 14, 2001, in the amount of \$23,599. Furthermore, Debtor's continued use and possession of the premises without formally assuming or rejecting the Taos Lease materially and adversely affects Lessor and will damage Lessor beyond the compensation available under the United States Bankruptcy Code. The Taos Lease is the anchor lease in Movant's shopping center. Uncertainty over continuation of occupancy by the anchor tenant inhibits the Movant's ability to lease vacant space in the center and to retain existing tenants in the center. The requested extension continues this uncertainty through the short and critical Taos leasing season (Spring and Summer) and thus unfairly penalizes Movant. (Because of winter conditions in Taos, leasing activity is deminimus in Fall and Winter). Thus, the requested delay has the

practical effect of penalizing Movant by causing Movant to forego effective leasing for the vacant space on the center, as well as Debtor's space should Debtor reject the lease, until Spring 2002, a penalty for which no compensation is available.

5. Based upon the foregoing, Movant objects to the August 10, 2001 extension for Debtor to determine whether to assume or reject the Taos Lease.

WHEREFORE, PREMISES CONSIDERED, Cruz Alta Plaza, Ltd. respectfully prays that this Court issue an Order compelling Debtor to either assume or reject the Taos Lease no later than April 2, 2001; and Cruz Alta Plaza, Ltd. have such other and further relief as is just and equitable.

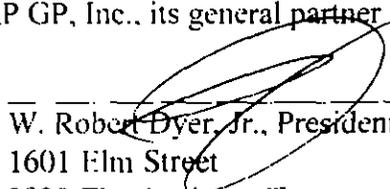
6. Dated: March 22, 2002.

Respectfully submitted,

Cruz Alta Plaza, Ltd.

By CAP GP, Inc., its general partner

By: \_\_\_\_\_

  
W. Robert Dyer, Jr., President  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Objection was served upon David T. Thuma, Jacobvitz, Thuma & Walker, P.C., 500 Marquette Ave., N.W., Suite 650, Albuquerque, N.M. 87102 and Richard Levia, Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071-3144, by Regular U.S. Mail on this 22<sup>nd</sup> day of March 2001.

A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be the name of the person certifying the service.