

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

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2001 APR 26

U.S. BANKRUPTCY
ALBUQUERQUE

In re:

FURR'S SUPERMARKETS, INC.,)
a Delaware Corporation)
Tax I.D. No. 75-2364418 (Federal);)
02-159595-0 (New Mexico))
Debtor.)

No. 11-01-10779-SA

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

PREMIER DISTRIBUTING COMPANY'S OBJECTION

Premier Distributing Company, Inc., ("Premier"), a creditor of Furr's Supermarkets Inc., debtor-in-possession (the "Debtor"), for its objection to claims of priority of Heller Financial, Inc. ("Heller"), Bank of America, N.A. ("BOA"), Fleet Capital Corporation ("Fleet"), and Metropolitan Life Insurance Company ("Met Life") (the "Lender Group") respectfully states as follows:

1. On March 14, 2001, this Court filed a Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection, and (3) Granting Other Relief. In that order, this Court granted the Lender Group a first lien on the assets previously pledged to them by the Debtor, unless creditors filed objections prior to April 30, 2001.

2. Premier objects to the claimed first lien by the Lender Group to the extent that lien asserts a first lien, claims a first superpriority lien on all or any of Debtor's liquor licenses, or to the extent the Lender Group or any one of them has failed to properly file and perfect liens on any of Debtor's assets specifically including Debtor's

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liquor licenses.

3. Premier claims a first lien on the liquor licenses described on Exhibit A, or any other licenses owned by Defendant (collectively the "Licenses"), based at least in part on the following facts:

A. Premier is a wholesale provider of alcoholic beverages to Debtor. Debtor's right to lawfully resell alcoholic beverages at retail is entirely dependent upon Debtor's compliance with New Mexico laws regarding liquor sales, including the Liquor Control Act. NMSA 1978, § 60-3A-1, et seq. (1998). "The state has broad police power to regulate the liquor business and the legislature may impose on the liquor industry more stringent regulations than on other type of businesses." First Interstate Bank of Lea County v. Taxation and Revenue Dept., 108 N.M. 756, 779 P.2d 133 (Ct. App. 1989), citing Chronis v. State ex rel. Rodriguez, 100 N.M. 342, 670 P.2d 953 (1983).

B. Pursuant to the Liquor Control Act, Debtor must maintain licenses permitting it to engage in the retail sale of alcoholic beverages (the "Liquor Licenses"), and must comply with all regulatory and statutory requirements in connection with the maintenance of the Liquor Licenses.

A. It is the policy of the Liquor Control Act that the sale, service and public consumption of alcoholic beverages in the state shall be licensed, regulated and controlled so as to protect the public health, safety and morals of every community in the state; and it is the responsibility of the director to investigate the qualifications of all applicants for licenses under that act, to investigate the conditions existing in the community in which the premises for which any license is sought are located before the license is issued, to

the end that licenses shall not be issued to persons or for locations when the issuance is prohibited by law or contrary to the public health, safety or morals.

B. It is the intent of the Liquor Control Act that each person to whom a license is issued shall be fully liable and accountable for the use of the license, including but not limited to liability for all violations of the Liquor Control Act and for all taxes charged against the license.

NMSA 1978, § 6-3A-2 (1998).

C. The New Mexico Liquor Control Act further provides a wholesaler liquor distributor with a lien on the liquor licenses of any liquor licensee for outstanding debts of the licensee to the distributor.

The transfer, assignment, sale or lease of any license shall not be approved until the director is satisfied that all wholesalers who are creditors of the licensee have been paid or that satisfactory arrangements have been made between the licensee and the wholesaler for the payment of such debts. Such debts shall constitute a lien on the license, and the lien shall be deemed to have arisen on the date when the debt was originally incurred.

NMSA 1978, § 60-6B-3 (1998).

D. The New Mexico Supreme Court, upon certification from the United States District Court for the District of New Mexico, upon request of the United States Bankruptcy Court, has held that the liens of liquor wholesalers have superpriority, even above state tax liens. In In re What D'Ya Call It, Inc., 105 N.M. 164, 730 P.2d 467 (1986) the court wrote, “[a] lien pursuant to Section 60-6B-3(E) has a superpriority status over other lienholders[.]” 105 N.M. at 165, 730 P.2d at 468.

E. The United States Bankruptcy Court for the District of New Mexico

has recognized that the liens of liquor wholesalers have superpriority status over even the properly perfected liens of lenders.

F. Pursuant to NMSA 1978, § 60-6B-3 (1998), Premier has a properly perfected superpriority lien on the Liquor Licenses because it is a wholesale liquor creditor of the Debtor's. The Debtor is indebted to Premier for approximately \$812,598.00 arising from delivery by Premier of alcoholic beverages which Debtor subsequently sold at retail without paying Premier, all of which is secured by a first and prior lien on the Debtor's owned or leased Liquor Licenses.

4. The Lender Group should be required to demonstrate that its liens are properly and timely perfected, with prior filed liens on all of the assets which it claims.

SUTIN, THAYER & BROWNE
A Professional Corporation

By _____



Gail Gottlieb

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We hereby certify and verify under penalty of perjury that we have hand delivered a copy of the foregoing pleading to the following on this 26th day of April, 2001:

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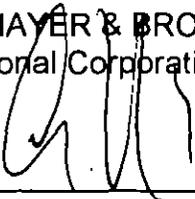
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SUTIN, THAYER & BROWNE
A Professional Corporation

By  _____

Premier Distributing Co.
Furr's Store Analysis

Store #	Location	NM Liq Lic#
874	13201 Lomas NE, Albuquerque, NM	973
812	7800 Enchanted Hills, Rio Rancho, NM	4042
868	6100 Central NE, Albuquerque, NM	617
878	2280-B Wyoming NE, Albuquerque, NM	4063
875	5800 Eubank NE, Albuquerque, NM	4067
877	2910 Juan Tabo NE, Albuquerque, NM	231
876	4016 Louisiana NE, Albuquerque, NM	884
866	1720 Bridge SW, Albuquerque, NM	4051
862	701 E Main, Los Lunas, NM	4029
801	700 N Main, Las Cruces, NM	254
811	1700 E Farmington, Farmington, NM	4047
860	4001 E Main, Farmington, NM	4069
886	5815 Wyoming NE, Albuquerque, NM	221
882	3301 Coors Rd NW, Albuquerque, NM	1306
884	111 Coors Rd NW, Albuquerque, NM	1385
881	3388 Southern Blvd. Rio Rancho, NM	4064
883	4201-A Central NW, Albuquerque, NM	4023
880	108 Juan Tabo NE, Albuquerque, NM	818
879	3701 Constitution NE, Albuquerque, NM	774
885	4701 4th NW, Albuquerque, NM	1309
891	2010 Plaza del Sur, Santa Fe, NM	4046
889	1700 St. Michael's Dr, Santa Fe, NM	482
896	1100 Paseo del Pueblo, Taso, NM	696
897	535 Central Ave, Los Alamos, NM	991
894	206 Mills Ave, Las Vegas, NM	461
893	Big Rock Shopping Ctr, Espanola, NM	939
871	8100 Ventura NE, Albuquerque, NM	187
899	901 California, Socorro, NM	275
898	102 Caldwell, Belen, NM	405
916	1500 N Date St, T or C, NM	881
914	414 E Pine St, Deming, NM	71
903	810 E 21st, Clovis, NM	996
901	Tucumcari Blvd, Tucumcari, NM	779
912	1220 N Hudson St, Silver City, NM	34

EXHIBIT "A"