

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED  
OFFICE OF THE CLERK  
2001 MAY -3 PM 1:42  
U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA

Debtor.

Chapter 11

**OBJECTION BY HELLER FINANCIAL, INC. AS AGENT TO  
MOTION OF PINNACLE LOGISTICS, INC. AND  
COUNTRYWIDE LOGISTICS, INC. TO COMPEL DEBTOR  
TO (1) ASSUME OR REJECT CERTAIN EXECUTORY CONTRACTS  
AND/OR ALTERNATIVELY (2) REQUIRING THE DEBTOR  
TO TENDER WEEKLY PAYMENTS ON A CASII DEMAND BASIS**

Heller Financial, Inc. as Agent for Fleet Capital Corporation, Bank of America, N.A., Heller Financial, Inc. and Metropolitan Life Insurance Company (hereinafter "Heller") objects to the relief requested by Pinnacle and Countrywide (hereinafter "Movants") for two reasons. First, Movants have already negotiated with the Debtor, and the Court has approved, an "Order on Emergency Motion of Furr's Supermarkets, Inc. to Grant Replacement Lien to Pinnacle Logistics, Inc. and Countrywide Logistics, Inc., and for Other Relief" ("Replacement Lien Order") entered March 2, 2001, effective February 9, 2001. Movants have bargained for and obtained appropriate protection under such Order. Second, there has been no default under the Order Granting Countrywide and Pinnacle the protection. As grounds for this objection Heller states:

1. Heller is Agent for the previously identified secured lenders.
2. As of September 23, 1998, Furr's and Pinnacle had entered into a warehousing and distribution agreement. That agreement is an executory contract.
3. As of March 26, 1999, Debtor and Countrywide had entered into a transportation services agreement which is also an executory contract.

113

4. The Replacement Lien Order gave Pinnacle a replacement warehouseman's lien, effective as of the Petition date, on all of Furr's goods shipped after the Petition date to Pinnacle's warehouse located in El Paso, Texas to the same extent, validity and priority of any warehouseman's lien Pinnacle may have enjoyed as of the Petition date.

5. Countrywide was also granted a replacement carrier's lien effective as of the Petition date, on all goods of Furr's transported by Countrywide after the Petition date to the same extent, validity and priority of any carrier's lien, Countrywide may have enjoyed as of the Petition date.

6. The Order further provided that:

except as otherwise provided by the contracts, and provided that neither Furr's nor Pinnacle or Countrywide (as the case may be) is in default of any post-petition obligation under their respective contracts, Furr's, Pinnacle and Countrywide must continue to perform their respective obligations under the contracts, unless otherwise ordered by the Court.

7. The Order also provided:

to the extent that the Replacement Liens are inadequate to protect their interests, the obligations of the Debtor to Pinnacle and/or Countrywide shall have priority over any and all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code.

8. The Order, which was approved by Pinnacle and Countrywide's counsel, expressly found that upon entry of the Order, "Pinnacle's and Countrywide's claimed lien on Furr's goods shall be adequately protected."

9. Although the Movants' claim that they are "concerned with the Debtor's ability to continue to pay its post-petition obligations . . ." Movants do not allege that Debtor has Defaulted on any post-petition obligations to either Movant.

10. Therefore, under the Replacement Lien Order, which was approved by and submitted by counsel for Movants, there is no reason to grant the Movants any additional relief.

11. No discovery has been done regarding Movant's allegations or any other matters which may be relevant to the Motion. Therefore, Heller reserves the right to object on additional grounds to the requested relief, if information obtained during discovery warrants such further objections.

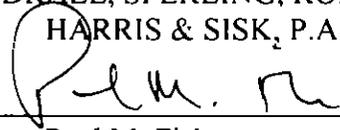
WHEREFORE, Heller Financial, Inc. as Agent for Fleet Capital Corporation, Bank of America, N.A., Heller Financial, Inc. and Metropolitan Life Insurance Company respectfully request that the Court deny the Motion by Pinnacle Logistics, Inc. and its affiliate Countrywide Logistics, Inc. and for such other and further relief as the Court deems appropriate.

LATHAM & WATKINS  
Josef S. Athanas  
5800 Sears Towers  
Chicago, IL 60606  
Telephone: 312-876-7670  
Fax: 312-993-9767

and

MODRALL, SPERLING, ROEHL,  
HARRIS & SISK, P.A.

By



Paul M. Fish  
William R. Keleher  
Post Office Box 2168  
Albuquerque, NM 87103-2168  
Telephone: 505-848-1800  
Facsimile: 505-848-1882  
ATTORNEYS FOR HELLER  
FINANCIAL, INC. AS AGENT

WE HEREBY CERTIFY that  
the foregoing pleading was  
mailed to

James A. Askew  
Rodey, Dickason, Sloan, Akin & Robb, PC  
Post Office Box 1888  
Albuquerque, New Mexico 87103-1888

Richard G. Downing, II  
Peter D. Wolfson  
Pryor, Cashman Sherman & Flynn LLP  
410 Park Avenue  
New York, New York 10022

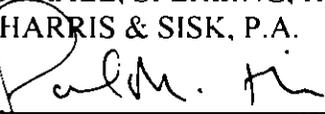
David T. Thuma  
Jacobvitz, Thuma & Walker, P.C.  
500 Marquette, NW, Suite 650  
Albuquerque, NM 87102

Office of the United States Trustee  
Post Office Box 608  
Albuquerque, New Mexico 87103-0608

this 2nd day of May, 2001.

MODRALL, SPERLING, ROEHL,  
HARRIS & SISK, P.A.

By



Paul M. Fish  
William R. Keleher