

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

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In re §
FURR'S SUPERMARKETS, INC. §
Debtor. §

Case No. 11-01-10779
Chapter 11

ORIGINAL

**OBJECTION OF LSF BASSETT, L.P. TO
PROPOSED ASSUMPTION AND ASSIGNMENT OF LEASE**

LSF Bassett, L.P., a creditor and party-in-interest in the above-styled and numbered bankruptcy case, hereby files this its "Objection to Proposed Assumption and Assignment of Lease", as follows.

I.

BACKGROUND

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 of non-residential real property (the "Lease") which Debtor designates as location no. 933. The Lease covers certain premises located in a shopping center (the "Center") known as the Bassett Shopping Center located at 1117 Geronimo, El Paso, Texas (the "Premises").

3. On or about March 1, 2001, Debtor filed its "Motion for Order Extending Time Within Which Debtor May Assume or Reject Unexpired Leases of Nonresidential Real Property" seeking an extension of time to assume or reject a number of unexpired leases of nonresidential real property, including the Lease. This Court signed and entered an order granting such extension over the objection of Bassett and others on April 6, 2001, and extended 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. On or about June 1, 2001, Debtor filed its "Motion for Order Approving Sale of Some or All of Debtor's Operating Assets and Granting Related Relief" (the "Sale Motion"). Pursuant to the Sale Motion,

Debtor sought, among other relief, an order approving the sale of all or part of the Debtor's operating assets, including its licenses and permits, to a purchaser to be determined at an auction to be held on June 25, 2001. As a result of the auction, on or about June 25, 2001, the Debtor entered into an Asset Purchase Agreement (the "APA") with Fleming Companies, Inc. ("Fleming") under which Fleming is permitted to purchase up to 66 store properties of the Debtor.

5. On June 29, 2001, the Court held a hearing on the Sale Motion, and granted the Sale Motion by entry of an order on July 3, 2001. On or about July 23, 2001, the Court entered an "Order Approving Procedure Relating to the § 365(f)(2) Adequate Assurance Requirement for Assignment of Leases".

6. On or about July 27, 2001, the Debtor filed and served its "Notice Relating to the § 365(f)(2) Adequate Assurance Requirement for Assignment of Store Leases, Lease Estoppel and of Final Hearing". With said notice, the Debtor served its "Third Party Purchaser Notice" by which it gave notice to Bassett of its intention to assume and assign the Lease through Fleming to Big 8 Foods, Ltd. ("Big 8"). The Assignment Notice Third Party Purchaser Notice were accompanied by various financial materials of Big 8, but not of the Debtor.

II.

OBJECTIONS

7. Bassett objects to the proposed assumption and assignment of the Lease to Big 8 for the reason that it contravenes the requirements of 11 U.S.C. § 365(b)(1)(C) and (3)(A). Section 365(b)(3)(A) requires the Debtor to demonstrate that the financial condition and operating performance of the proposed assignee and its guarantors, if any, is similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease. This the Debtor cannot do. While the Debtor has supplied to Bassett various financial materials of Big 8, the Debtor has wholly failed to supply similar materials for the Debtor as of March 11, 1991, the date the Debtor assumed the Lease. Without such comparative financial materials, the Debtor has not and cannot demonstrate that the financial condition and operating performance of Big 8 is similar to the financial condition and operating

performance of the Debtor as of March, 1991 as required by 11 U.S.C. § 365(b)(3)(A). Accordingly, Debtor has failed to provide adequate assurance of future performance as required by 11 U.S.C. § 365(b)(1)(C), and the Debtor's proposed assumption and assignment of the Lease should be rejected.

8. Bassett further objects to the proposed assumption and assignment of the Lease to Big 8 for the reason that it contravenes the requirements of 11 U.S.C. § 365(b)(1)(C) and (3)(C). Specifically, the proposed assignment violates the "use" provision contained in the Lease. Section 16 of the Lease provides that the Premises are to be used solely to conduct a "first-class Safeway Supermarket facility". The proposed assignment runs afoul of the use provisions. Big 8 Foods is a second-tier, local discount supermarket operator which can hardly be characterized as "first-class." Accordingly, Debtor has failed to provide adequate assurance of future performance as required by 11 U.S.C. § 365(b)(1)(C), and the Debtor's proposed assumption and assignment of the Lease should be rejected.

9. Bassett further objects to the proposed assumption and assignment of the Lease to Big 8 for the reason that it contravenes the requirements of 11 U.S.C. § 365(b)(1)(C) and (3)(D). Specifically, the proposed assignment to Big 8 a second-tier, local discount supermarket operator, would disrupt the tenant mix and balance in the shopping center, which targets higher-end consumers. Accordingly, Debtor has failed to provide adequate assurance of future performance as required by 11 U.S.C. § 365(b)(1)(C), and the Debtor's proposed assumption and assignment of the Lease should be rejected.

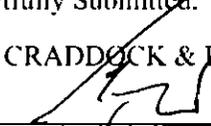
10. Bassett further objects to the proposed assumption and assignment of the Lease to Big 8 for the reason that no cure amount has been stated, and the Debtor has not cured or provided adequate assurance that the Debtor will promptly cure the default under the Lease as required by 11 U.S.C. § 365(b)(1)(A).

WHEREFORE, LSF Bassett, L.P. requests that this Court deny the proposed assumption and assignment of the Lease to Big 8 Foods, Ltd., and enter such other and further orders as are just.

DATED: August 1, 2001.

Respectfully Submitted.

BUSH CRADDOCK & RENEKER, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served on August 1, 2001 by facsimile and first class United States mail upon:

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