

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED  
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AUG - 3 2001

DROP BOX  
United States Bankruptcy Court  
Albuquerque, New Mexico

In re:

FURR'S SUPERMARKETS, INC.

No. 11-01-10779-SA

Debtor.

**OBJECTION OF HELLER FINANCIAL LEASING, INC. TO THE DEBTOR'S  
MOTION TO ASSUME AND ASSIGN ITS EQUIPMENT LEASE**

Heller Financial Leasing, Inc. ("Heller") hereby submits this objection (the "Objection") to the motion to assume and assign its equipment lease filed by the above-captioned debtor and debtor-in-possession (the "Debtor"). In support of this Objection, Heller respectfully states as follows:

1. On September 30, 1999, General Electric Capital Business Asset Funding Corporation ("GE Capital Corp.") entered into a Master Equipment Lease Agreement (the "Master Lease") with the Debtor. Pursuant to the Master Lease, GE Capital Corp. agreed to lease equipment to the Debtor.

2. On September 30, 1999, pursuant to the Master Assignment Agreement, GE Capital Corp. assigned the Master Lease to Heller. Heller, as Assignee, continued to lease equipment to the Debtor pursuant to the Master Lease.

3. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for reorganization under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtor has retained possession of its assets and continued to operate and manage its business, including multiple grocery stores throughout the

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Southwest. Heller continues to lease equipment to the Debtor under the Master Lease for use at the various stores and the warehouse the Debtor continues to operate.

5. On July 25, 2001, the Debtor served its Notice Relating to the § 365(f)(2) Adequate Assurance Requirement for Assignment of Equipment Leases, lease Estoppel, and of Final Hearing regarding its Motion seeking to assume and assign certain real property leases, subleases and equipment leases. Apparently, the Debtor seeks to assume and assign the Master Lease, but no entity is intended to actually assume the entire Master Lease.

6. Specifically, the Debtor seeks to split the Master Lease into a large number of separate leases. No entity would be liable for each and every part of the Master Lease. Rather than one unitary lessee under the Master Lease, the Debtor is proposing that Heller would have many small lessees.

7. It is a basic tenet of bankruptcy law that a debtor must assume an executory contract or lease in its entirety. In re Storage Corp., 53 B.R. 471, 175-76 (Bankr. D. Colo. 1985); In re Rovine Corp., 6 B.R. 661, 666 (Bankr. W.D. Tenn. 1980). A debtor "may not have its cake and eat it too." In re Holland Enterprises, Inc., 25 B.R. 301, 303 (Bankr. E.D.N.C. 1982). A debtor must assume all the benefits and burdens of a contract or lease and can not cherry-pick which portions of a contract or lease it wishes to honor. Id. Further, a debtor can not seek to avoid this elementary bankruptcy principal by attempting to construe various parts of a transaction as separate agreements. In re Storage Corp., 53 B.R. at 476. Every piece of equipment of Heller used at the Debtor's various stores was provided as part of the Master Lease. Thus, the Debtor simply can not reject the portions of the Master Lease involving equipment at the Closed

Stores while attempting to maintain the remaining portions of the Master Lease. Although a debtor can use its business judgment to determine whether to reject an unexpired lease in its entirety, it can not choose to reject only a portion of such lease because to do so would allow a debtor to enjoy greater rights and powers under a lease in bankruptcy than it would under the same lease outside of bankruptcy. See In re Holland, 25 B.R. at 303.

8. Assumption and assignment is an all or nothing concept. If the Debtor wishes to assume and assign the portion of the Master Lease, the assignee must assume the Master Lease in its entirety.

Dated: August 3, 2001

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

By: 

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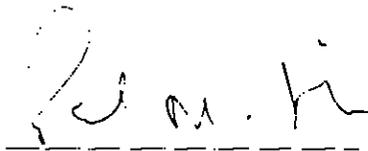
This certifies that on August 3, 2001,  
A copy of this Motion was mailed by  
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