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Final Hearing Date: August 14, 2001
Objection Deadline: August 13, 2001

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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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	:	Chapter 11
In re	:	Case Nos. 11-01-10779-SA
FURR'S SUPERMARKETS, INC.,	:	
	:	
Debtor.	:	
-----	X	

**OBJECTION OF COMDISCO, INC. TO
NOTICE OF PROPOSED CURE AMOUNTS,
OBJECTION DEADLINE AND FINAL HEARING**

Comdisco, Inc. ("Comdisco"), a pre-petition and administrative creditor of the above captioned Debtor and Debtor-In-Possession (the "Debtor"), hereby states as follows:

SUMMARY OF RELIEF REQUESTED

1. By notice dated August 3, 2001 (the "Notice"), the Debtor purported to give notice of a deadline for objection to the Debtor's statement of amounts needed to cure defaults (as defined in the Notice, the "Proposed Cure Amounts") under Comdisco's Lease (as defined below). Comdisco objects to the Debtor's calculation of the Proposed Cure Amounts on the grounds that (a) they are not the only defaults under the Lease and (b) the time provided for calculation of the Proposed Cure Amounts is insufficient to make a proper determination of the amounts needed to cure defaults under Comdisco's Lease. Comdisco objects on both grounds, and, in addition, objects to the partial assignment of its Lease.

2. Comdisco is a Chapter 11 Debtor¹. Accordingly, section 362(a) of the Bankruptcy Code prevents, among other things, any act "to exercise control over property of [Comdisco's] estate." 11 U.S.C. § 362(a)(3).

3. Comdisco is the owner and lessor of certain equipment (the "Equipment")² used by the Debtor in its various businesses. By the Notice, the Debtor appears to seek an order, on notice far less than that required by the Bankruptcy Code or Bankruptcy Rules, foreclosing lessor's rights under 11 U.S.C. § 365. Accordingly, Comdisco hereby objects to the Debtor's proposed actions to the extent that its ownership interest in the Equipment or the Debtor's tenancy under the Lease is affected.

4. The Equipment is subject to the Lease. The Debtor cannot sell the Equipment³ and it is required to fulfill its obligations pursuant to Section 365(d)(10) of the Bankruptcy Code⁴. The Equipment referenced in the Lease was clearly identified by serial number and description.

¹ On July 16, 2001, Comdisco filed a voluntary Chapter 11 case in the United States Bankruptcy Court for the Northern District of Illinois. The case is pending before United States Bankruptcy Judge Barliant and bears Case No. 01-24795. John Butler, Jr., Esq., of Skadden Arps Slate Meagher & Flom, 333 West Wacker Drive, Chicago, Illinois 60606, represents Comdisco as a debtor and debtor-in-possession. Skadden Arps Slate Meagher & Flom also represents the Debtor in the instant chapter 11 case. Kensington & Ressler LLC has been retained as special counsel to Comdisco in its chapter 11 case.

² The Equipment generally consists of network equipment, phone systems, test equipment, work stations, desktop computers, portable computers, peripherals, office furniture and other personal property.

³ The Equipment is subject to the Lease. Comdisco owns the Equipment. The Debtor can assume or reject the Lease, but cannot sell the Equipment.

⁴ On May 7, 2001, Comdisco filed a request for payment of administrative expenses in the amount of \$117,390.25. The request contained a copy of the Lease and a listing of the Equipment.

5. The Debtor is the lessee under, upon information and belief, 75 real property leases. Upon information and belief, the Debtor has entered into various agreements to assume and assign the its interest in certain of those real property leases to various other entities, and has rejected certain others. Comdisco's Equipment is in substantially all of the Debtor's locations. None of Comdisco's equipment has been returned.

BACKGROUND

6. On February 8, 2001 (the "Filing Date"), the Debtor filed a voluntary petition commencing its Chapter 11 case pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"). Upon information and belief, the Debtor is continuing to manage and operate its businesses and properties as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

7. Comdisco is a technology services company. Comdisco is in the business of helping its customers maximize technology functionality, predictability and availability. Among the technology services offered is the leasing of communication, computer and data processing equipment.

8. Comdisco is a lessor of the Debtor pursuant to an unexpired master lease of personal property dated June 23, 1994 (the "Master Lease"⁵) together with certain addenda, equipment schedules and other related documents (collectively, the Master Lease, equipment schedules, addenda and related documents are referred to hereinafter as the "Lease"). The Lease governs the

⁵ The Master Lease was entered into between Comdisco as lessor and Furr's Supermarkets, Inc.

Debtor's use of the Equipment. The Lease is extremely voluminous, but will be provided to interested parties on request⁶.

9. Pursuant to the Lease, the Debtor leased from Comdisco the individual items of Equipment described in each of the Equipment Schedules and the Debtor commenced making rent payments pursuant to the terms of the Lease.

10. The Lease has not as yet been assumed or rejected. The automatic stay remains in effect. As a result, Comdisco is prohibited from recovering the Equipment.

11. The Debtor continue to incur an administrative claim for the use of the Equipment until the Lease is rejected. 11 U.S.C. § 365(d)(10).⁷

⁶ A copy of a portion of the Lease was filed with the Court on May 7, 2001 as an exhibit to Comdisco's Request for Payment of Administrative Expense, together with a list of certain Equipment in which Comdisco asserts an interest.

⁷ Section 365(d)(10) of the Bankruptcy Code states as follows:

The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

OBJECTION TO RELIEF SOUGHT

12. If the Debtor intends to assume and assign the Lease, it must comply with sections 365 (b) and (f) (2)(B)⁸. Comdisco is owed a total of \$107,861.73⁹ for its prepetition cure amount and has filed a request for payment of administrative expenses in the amount of \$117,390.25¹⁰. The amount due to Comdisco since March 31, 2001 is unknown as of the date hereof although rents are accruing at approximately \$100,000 per month. The Debtor has previously asserted that the total prepetition and postpetition cure amount is \$77,908.76. See Exhibit 1 to Notice dated June 1, 2001.

⁸ Section 365(b) of the Bankruptcy Code states in relevant part as follows:

(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee -

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

Section 365(f)(2)(B) states in relevant part as follows:

(f)(2) The trustee may assign an executory contract or unexpired lease of the debtor only if--

.....
(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

⁹ Rent for the period from January 1, 2001 through February 7, 2001 is \$98,574.21 and personal property taxes due under the Lease total \$9,287.52.

¹⁰ The Debtor paid \$119,692.01 on May 18, 2001, which appears to represent rent due from February 8, 2001 through March 31, 2001.

13. The Debtor does not even begin to address the issues raised by the automatic stay in Comdisco's case. Any assumption and assignment that purports to affect Comdisco's interest in the Lease is void.

14. Accordingly, to the extent that the Debtor seeks to assume and assign Comdisco's Lease, Comdisco opposes such transaction to the extent that the Debtor seeks to do so without full compliance with Section 365 (b) and (f) of the Bankruptcy Code, including full payment of all sums due and adequate assurance of future performance under the Lease.

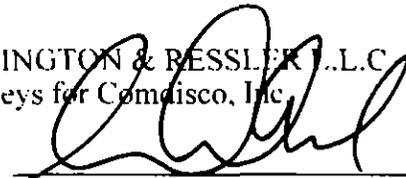
15. In any event, Comdisco demands that the Debtor maintain appropriate security, protection and insurance for the Equipment until the Equipment is returned to Comdisco, all as is required under the Lease.

16. Comdisco also objects because the time provided under the Notice is insufficient to resolve the Proposed Cure Amount and appears calculated to deprive Comdisco, among others, of sufficient time to determine actual cure amounts.

WHEREFORE, Comdisco respectfully requests that (a) the Debtor's Proposed Cure Amounts be denied, and (b) Comdisco be granted such other and further relief as is just and proper, for all of which no other request has been made to this or any other Court except as is otherwise set forth herein.

Dated: New York, New York
August 10, 2001

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