

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

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In re § U.S. BANKRUPTCY COURT
FURR'S SUPERMARKETS, INC. § Case No. 11-10779-002, N.M.
Debtor. § Chapter 11
§ Hearing Set:
§ August 30, 2001 at 1:00 p.m.

OBJECTION OF LSF BASSETT, L.P. TO
(1) PROPOSED ORDER FINDING ADEQUATE ASSURANCE AND
(2) PROPOSED ORDER APPROVING DEBTOR'S ASSUMPTION AND ASSIGNMENT OF
UNEXPIRED LEASES

LSF Bassett, L.P., a creditor and party-in-interest in the above-styled and numbered bankruptcy case, hereby files this its "Objection to (1) Proposed Order Finding Adequate Assurance And (2) Proposed Order Approving Debtor's Assumption And Assignment of Unexpired Leases", 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 "Bassett 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 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

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(the "APA") with Fleming Companies, Inc. ("Fleming") under which Fleming is permitted to purchase up to 66 store properties of the Debtor.

4. 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".

5. 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 Bassett Lease through Fleming to Big 8 Foods, Ltd. ("Big 8"). Bassett filed its objection to the proposed assignment.

6. The Court held a hearing on the proposed assignment and Bassett's objection thereto on August 7, 2001. At the hearing, the Court conditionally approved assumption and assignment of the Bassett Lease to Big 8 Foods, Ltd., subject to each of the affiliates of Big 8 Foods, Ltd. becoming obligated on the Bassett Lease. The Court instructed Debtor's counsel to circulate the order to Bassett's counsel prior to presentment to the Court.

II.

OBJECTIONS

7. On August 23, 2001, Debtor's counsel forwarded by email a notice of presentment hearing and four (4) orders the Debtor proposed to present to the Court, including (1) "Order Finding Adequate Assurance" and (2) "Order Approving Debtor's Assumption And Assignment of Unexpired Leases."

8. With respect to the "Order Finding Adequate Assurance," said Order is superfluous and not contemplated by the Bankruptcy Code. Because 11 U.S.C. § 365(b)(1) and (3) require adequate assurance of future performance as a condition of assumption of the Lease, then the finding of adequate assurance should be made in the Order Approving Assumption and Assignment, or in written findings of fact and conclusions of law, but not in a separate "Order".

9. Alternatively, the "Order Finding Adequate Assurance" should specify who the affiliates of Big 8 Foods, Ltd. that must guarantee the Lease, i.e. Big 8 Supermarkets, L.C., Edd Powell Partnership, and Edd and Ethel Powell 1993 Trust. Accordingly, Bassett objects to the said order to the extent that it fails to do so, and submits that paragraph D of the order be amended to read:

"The proposed assignment of the lease for the Debtor's store #933 to Big 8 Foods, Ltd satisfies the requirements of 11 U.S.C. §§365(1)(2), and Bassett's objection thereto is overruled, provided that the affiliates of Big 8 Foods Ltd., **namely Big 8 Supermarkets, L.C., Edd Powell Partnership, and Edd and Ethel Powell 1993 Trust,** agree to be liable for all obligations under the lease to the same extent as Big 8 Foods Ltd. If the affiliates of Big 8 Foods Ltd are unwilling to become so obligated, then the Court's finding of adequate assurance will be withdrawn."

10. With respect to the "Order Approving Debtor's Assumption And Assignment of Unexpired Leases," since assumption and assignment of the Bassett Lease is conditioned on a finding of adequate assurance of future performance, and because the Court has conditioned said finding on the guarantees of the affiliates of Big 8 Foods, Ltd., such condition needs to be incorporated into the "Order Approving Debtor's Assumption and Assignment of Unexpired Lease." Accordingly, Bassett objects to the said order to the extent that it is not so conditioned, and submits that paragraph 2 of the order be amended to read:

"The Debtor may assign the Leases to those third party assignees identified on Exhibit A to this Order, conditioned upon (i) payment of the cure amounts set forth in the Cure Order, ~~and~~ (ii) consummation of the transactions contemplated under the Asset Purchase Agreement, **and, (iii) as to Lease No. 933 with LSF Bassett, L.P, the affiliates of Big 8 Foods Ltd., namely Big 8 Supermarkets, L.C., Edd Powell Partnership, and Edd and Ethel Powell 1993 Trust, agree to be liable for all obligations under the lease to the same extent as Big 8 Foods Ltd.**

11. Bassett made the foregoing comments by email to David Thuma, counsel for Debtor, on August 24, 2001, but as of the date hereof, has not heard back from Mr. Thuma. While Bassett is optimistic that its concerns will be properly addressed by Debtor's counsel prior to submission of the orders to the Court, in light of the hearing on October 30, 2001 on said orders, Bassett hereby lodges this objection in order to preserve its position with respect to the matters herein.

WHEREFORE, LSF Bassett, L.P. requests that this Court condition entry of the Debtor's Proposed Order Finding Adequate Assurance, and Proposed Order Approving Debtor's Assumption And Assignment of Unexpired Leases, in accordance with the foregoing objections, and enter such other and further orders as are just.

DATED: August 27, 2001.

Respectfully Submitted,

BUSH CRADDOCK & RENEKER, L.L.P.

By:



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ATTORNEYS FOR LSF BASSETT, L.P.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served on August 27, 2001 by facsimile and first class United States mail upon:

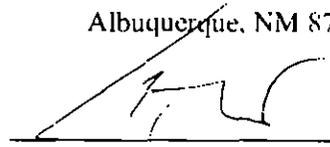
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A handwritten signature in black ink, appearing to read "Kevin T. White", is written over a horizontal line.

Kevin T. White