

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

FILED
OFFICE OF THE CLERK
2001 AUG 28 AM 10:54

In re: § Case No. 01-10779
§ (Chapter 11)
FURR'S SUPERMARKETS, INC., §
§
Debtor. §

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

COMPAQ FINANCIAL'S OBJECTION TO
DEBTOR'S MOTION TO REJECT IN PART
COMPAQ FINANCIAL'S UNEXPIRED EQUIPMENT LEASE

Compaq Financial Services Corporation f/k/a Compaq Capital Corporation ("CFS") objects to the Debtor's attempt to reject part and assume part of CFS' equipment lease, on the following grounds:

1. CFS is a lessor of equipment under a lease. Although the Debtor has sought to sever certain equipment leases in this case, CFS' lease has not been the subject of the Debtor's severability challenge. The Debtor now has served its Notice of Deadline to Object to the Debtor's Motion to Reject Certain Unexpired Real Estates Leases, Subleases, and Equipment Leases, and Notice of Final Hearing on Any Objections (the "Notice").

2. The Notice identifies approximately 28 stores where the Debtor believes CFS equipment is located and for which Debtor seeks to reject only so much of CFS' lease as it pertains to such 28 closed stores. Absent consent of the lessor, such an attempt to reject part and assume and assign other parts of the same lease is prohibited under applicable law. *See, e.g., In re Rickel Homes Centers, Inc.*, 209 F.3d 291 (3rd Cir. 2000); *In re Shangra-La, Inc.*, 167 F.3d 843 (4th Cir. 1999) (Debtor must either assume entire contract, *cum onere*, or reject the entire contract).

3. CFS and the Debtor have negotiated a buyout arrangement for the CFS equipment. The deal has been presented to Debtor's counsel for documentation, but the papers have not yet been prepared. Because the Court has not approved the buyout arrangement and payment of the buyout

CS

price, CFS has no choice but to object to the Debtor's rejection notice at the present time to preserve its rights.

WHEREFORE, PREMISES CONSIDERED, CFS prays for an Order denying the Debtor's attempt to assume some but not all of the equipment that is the subject of the CFS lease agreement and related schedules, and granting CFS such other and further relief as is just and warranted.

Respectfully submitted,

THOMPSON & KNIGHT L.L.P.

By: 

James R. Prince
State Bar No. 00784791

Lesley C. Ardemagni
State Bar No. 00790723

1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201-4693
(214) 969-1700 TELEPHONE
(214) 969-1751 FACSIMILE

ATTORNEYS FOR COMPAQ FINANCIAL
SERVICES CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on this, the 27th day of August, 2001, a true and correct copy of the above and foregoing was served upon the parties listed below *via* facsimile and regular mail:

Robert H. Jacobvitz, Esq.
Thomas D. Walker, Esq.
Jacobvitz Thuma & Walker, P.C.
500 Marquette N.W., Suite 650
Albuquerque, New Mexico 87102

Stephen J. Lubben, Esq.
Skadden, Arps, Slate, Mcagher & Flom LLP
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071-3144



James R. Prince