

ORIGINAL

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.
Case No. 11-01-10779-SA

IN RE:

FURR'S SUPERMARKETS, INC.
a Delaware Corporation,

Debtor.

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OBJECTION TO NOTICE OF CHANGE OF HEARING DATES AND NOTICE RELATING TO THE § 365(F)(2) ADEQUATE ASSURANCE REQUIREMENT FOR ASSIGNMENT OF STORE LEASES, LEASE ESTOPPEL, AND OF FINAL HEARING

Claus Dolling ("Dolling") hereby objects to the Debtor's Notice Relating to the § 365(f)(2) Adequate Assurance Requirement for Assignment of Store Leases, Lease Estoppel, and of Final Hearing (the "Adequate Assurance Notice") received on August 23, 2001 and the Notice of Change of Hearing Dates (the "Hearing Dates Notice") received on August 27 at 5:36 p.m. Central Standard Time, and states:

1. Dolling is the lessor ("Lessor") of Furr's store #917, 401 S. Main, Lovington, New Mexico.
2. Debtor has proposed to assign Furr's store #917 to MAL Enterprises.
3. The Adequate Assurance Notice was received by Dolling on August 23, 2001. The Adequate Assurance Notice provides in pertinent part:

that each lessor set forth on the attached Schedule A (individually, a "Lessor") shall have five (5) days after receipt of this Notice (the "5-Day Period") to file and serve on counsel for the Debtor: (i) any objection . . . on the ground that adequate assurance of future performance by the Assignee is not provided . . .

See the Adequate Assurance Notice.

4. The Hearing Dates Notice was received less than two days before the hearings on objections to the Adequate Assurance Notice.

OBJECTION TO NOTICE OF CHANGE OF HEARING DATES AND NOTICE RELATING TO THE SECTION 365(F)(2) ADEQUATE ASSURANCE REQUIREMENT FOR ASSIGNMENT OF STORE LEASES, LEASE ESTOPPEL, AND OF FINAL HEARING – Page 1

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5. Dolling objects to the Adequate Assurance Notice and the Hearings Date Notice as follows:

- a. Dolling has not received adequate time (i.e., the “5-Day Period”) to review the documentation pursuant to the Adequate Assurance Notice; and
- b. Dolling has been denied his due process with respect to the Hearings Date Notice and the Adequate Assurance Notice that shortened his time to review all materials forwarded to him and to file an objection within the three days remaining.
- c. No harm arises to the Debtor because the Debtor has a contract to sell Store #917 to The Fleming Companies whether or not a hearing is held on the Debtor’s proposed assignment of Furr’s Store #917 to MAL Enterprises.

WHEREFORE Dolling respectfully requests that the Court determine that Dolling has until August 30, 2001, five days after receiving the Adequate Assurance Notice, to file his objection, if any, and delay any ruling on the issue of adequate assurance with respect to store #917 until Dolling’s 5-Day Period has expired and Dolling has had his opportunity to object and be heard before this Court. Additionally, Dolling respectfully requests all such other and further relief to which he may be entitled to.

Respectfully submitted,

GARDERE WYNNE SEWELL, LLP



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ATTORNEYS FOR CLAUS DOLLING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection was mailed and faxed to the following:

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and emailed a copy to rjacobvitz@jtwlawfirm.com and slubben@skadden.com.



Merrill L. Kaliser