

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,  
Debtor.

Case No. 7-01-10779-SA  
Chapter 7

**ORDER GRANTING JOINT MOTION TO APPROVE  
SETTLEMENT OF ADVERSARY PROCEEDING**

THIS MATTER came before the Court on the Joint Motion to Approve Settlement of Adversary Proceeding (the "Motion") (doc. #1585) filed on March 4, 2002 by Yvette J. Gonzales, Chapter 7 Trustee ("Trustee") and Heller Financial Leasing, Inc. ("Heller"), each by counsel, pursuant to F. R. Bankr. P. 9019, to settle adversary proceeding number 01-1160S captioned *Furr's Supermarkets, Inc. v. MDFC Equipment Leasing Corp. and Heller Financial, Inc.* (the "Adversary Proceeding").

Having reviewed the Motion, and being otherwise advised in the matter, THE COURT FINDS: (a) Debtor commenced this bankruptcy case by filing a voluntary petition on February 8, 2001 in this Court under chapter 11 of title 11 of the United States Bankruptcy Code; (b) on December 19, 2001, the Court entered an order converting the chapter 11 case to a case under chapter 7; (c) on December 19, 2001, Yvette Gonzales was appointed the chapter 7 trustee for the Debtor's bankruptcy estate, and continues to be the trustee in the case; (d) Debtor commenced the Adversary Proceeding by filing a verified complaint on August 1, 2001; (e) the Trustee and Heller have agreed to a settlement of all claims in the Adversary Proceeding (the "Settlement"); (f) the Motion was filed on March 4, 2002; (g) on March 12, 2002, notice of the Motion (the "Notice") (doc. #1606) was mailed

by first class United States mail, postage prepaid, to all persons on (h) the limited mailing matrix maintained in the bankruptcy case, a copy of which was attached to the original of the Notice filed with the Clerk of the Bankruptcy Court, as shown by the certificate of service on the Notice filed with the Court; (i) the Notice provided for a deadline to object to the Motion of April 4, 2002, which was twenty days after the date of mailing of the Notice, plus three days for mailing, for the total of twenty-three days; (j) the Notice was sufficient and appropriate in the particular circumstances; (k) the deadline to object to the Motion expired on April 4, 2002, and no timely objections to the Motion were filed; (l) the requirements of Bankruptcy Rule 9019 have been satisfied with respect to the relief granted by this Order; (m) the Settlement is fair and equitable, and in the best interests of the Debtor's estate and the creditors; and, (n) entry of this Order, without further notice or hearing, is appropriate.

THEREFORE. THE COURT ORDERS, ADJUDGES AND DECREES: \_\_\_\_\_

1. As used in this Order, and in addition to other terms defined herein, the following terms are defined as follows: The "Heller Lease" means an equipment lease, including an 8-page Master Equipment Lease Agreement, two closing schedules, a document entitled "Equipment Lease No. One," two certificates of acceptance, equipment lists, documents evidencing assignment to Heller, and public filing and recording documents in which Debtor is the lessee and Heller is the lessor; the "Equipment" means under that certain equipment and other personal property, leased by Debtor from Heller under the Heller Lease, including certain equipment located and used at Debtor's stores numbers 953 and 954 (the "Store Equipment"), and other equipment located and used at the Debtor's warehouse (the "Distribution Center") at 9820 Railroad Drive and 9601 Railroad Drive in El Paso, Texas

(the "Distribution Center Equipment"), but the Equipment does not include that certain floor cleaning equipment referenced in the Heller Lease, which was severed from the Equipment and the Heller Lease, by previous agreement.

2. The Settlement, as described in the Motion and below, is approved.

3. The terms of the Settlement are as follows:

A. The Store Equipment is severed from the Heller Lease and shall no longer be part of the Equipment leased thereunder. All right, title and interest in the Store Equipment of the Debtor, the Debtor's estate and the Trustee shall be and is hereby transferred to Heller following entry of this Order, in full satisfaction of Heller's claim against the Debtor or Debtor's estate arising from the lease of the Store Equipment under the Heller Lease. The Trustee agrees to use reasonable efforts to complete the pending agreement to sell the Store Equipment for former Store number 954, the proceeds of which shall be made payable to Heller or shall be promptly transferred to Heller. Heller shall have the right to assume responsibility for completing the sale of the Store Equipment for former Store number 954 at any time after approval of the Settlement. Heller is hereby granted relief from the automatic stay with respect to the Store Equipment to permit Heller to exercise its rights and remedies under non-bankruptcy law to take possession of and liquidate the Store Equipment.

B. The Heller Lease and the Trustee's obligations under the Heller Lease are revised as follows:

(1) The Heller Lease and the Equipment leased thereby is limited to the Distribution Center Equipment and shall no longer include the Store Equipment or the

floor cleaning equipment.

(2) The Heller Lease shall be treated as, and is declared to be, an unexpired lease of personal property pursuant to 11 U.S.C. 365 and the applicable Uniform Commercial Code, and not a security interest, except as specifically provided in the Settlement.

(3) The Periodic Rent or Periodic Rental (as defined in the Heller Lease and referred to herein as the "Rent") under the Heller Lease shall be \$38,205.98 per month beginning on March 1, 2002 and thereafter on the first day of each month for a total of 38 months, after which the Lease will expire. The Rent payments that come due after the filing of the Motion but before approval of the Settlement shall be paid within ten (10) days following entry of this Order.

C. The Adversary Proceeding shall be dismissed with prejudice.

D. The Heller Lease is neither assumed nor rejected hereby. Notwithstanding the provisions of Code §365, the Trustee shall not have any deadline to assume, assign or reject the Heller Lease, absent further order of the Court, provided that the payments required in section B (3) above are timely made.

E. If the Heller Lease is assumed and assigned, the amount necessary to be paid to cure the default under the Heller Lease shall be no greater than the product of the number of months of rent in arrears multiplied by \$38,205.98.

F. When the Heller Lease expires, whether or not it has been assumed or rejected prior to expiration, the Trustee or lease assignee, as the case may be, shall have the option to purchase the Equipment for payment to Heller in the total amount of \$197,753.50.

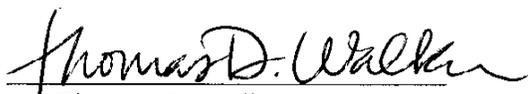
G. The Settlement is a compromise of disputed claims and defenses raised in the Adversary Proceeding by Debtor and Heller. The terms of the Settlement are not and shall not be deemed to be an admission and shall not be used against any party hereto except to enforce the terms hereof. By entering into this Settlement, neither the Trustee nor Heller admits any wrongdoing or liability with respect to any claims or defenses that were or that could have been raised in the Adversary Proceeding.

H. The terms of the Settlement shall become effective following entry of this Order and shall be binding on and enforceable by and between Heller and the Trustee, their successors and assigns. The Heller Lease is modified by the terms of the Settlement to the extent inconsistent therewith.

  
JAMES S. STARZYNSKI  
United States Bankruptcy Judge

SUBMITTED BY:

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By   
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I hereby certify that a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to the listed counsel and parties on:

APR 10 2002

Mary B. Anderson

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By Approved by telephone TDW 4/8/02  
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