

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 MOTION TO SELL CERTAIN PERSONAL PROPERTY IN
STORE #954 FREE AND CLEAR OF LIENS AND INTERESTS, AND TO APPROVE
SETTLEMENT

THIS MATTER came before the Court on the *Motion to Sell Certain Personal Property in Store #954 Free and Clear of Liens and Interests, and To Approve Settlement* (the "Motion") filed on March 18, 2002 (doc. #1608) by Yvette J. Gonzales, Chapter 7 Trustee ("Trustee"), by counsel. 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. The Motion was filed on March 18, 2002;

E. On March 22, 2002, notice of the Motion (the "Notice") (doc. #1621) was mailed by first class United States mail, postage prepaid, to all persons on 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;

F. The Notice provided for a deadline to object to the Motion of April 15, 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;

G. The Notice was sufficient and appropriate in the particular circumstances;

H. The deadline to object to the Motion expired on April 15, 2002, and no timely objections to the Motion were filed;

I. The requirements of the Bankruptcy Code and Rules, including Code §363 and Rule 9019, have been satisfied with respect to the relief granted by this Order;

J. The relief granted herein is fair and equitable, and in the best interests of the Debtor's estate and the creditors; and,

K. Entry of this Order, without further notice or hearing, is appropriate.

THE COURT FINDS FURTHER THAT:

L. As used in this Order, and in addition to other terms defined herein, the following terms have the following meanings: (1) "Store #954," means Debtor's former grocery store number 954 in Anthony, Texas, that was closed by the Debtor in August 2001; (2) "Heller" means Heller Financial Leasing, Inc.; (3) "Store Equipment" means that certain in-store furnishings, fixtures, machinery, equipment and other personal property described on the Exhibit "A" attached to the Motion and to this Order, leased to Debtor by Heller and used by Debtor in its operation of Store #954, and constitutes the entire operating assets of Store #954 except for incidental equipment not owned by Heller or Debtor but leased to the Debtor

by third parties other than Heller; (4) "La Feria" means La Feria Park-N-Shop, Inc., the owner of the real property on and in which Store #954 was operated; (5) "Baca" means Mr. Adrian Baca;

M. On April 10, 2002, the Court entered in this case its *Order Granting Joint Motion To Approve Settlement Of Adversary Proceeding* (the "April 10, 2002 Order") in which the Court ordered, *inter alia*, that "[a]ll right, title and interest in the Store Equipment [which includes the "Store Equipment" as defined herein] of the Debtor, the Debtor's estate and the Trustee shall be and is hereby transferred to Heller following entry of this Order" and that "[t]he 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;"

N. Heller, the Trustee, and La Feria have reached an agreement to sell the Store Equipment to La Feria, free and clear of all liens and interests, for a lump sum, cash payment of \$200,000.00 from La Feria to the Trustee or to Heller;

O. The agreement to sell the Store Equipment to La Feria represents fair and reasonable value for the Store Equipment; and

P. The only parties that claim a lien or other interest in the Store Equipment are Debtor, Heller and the Debtor's pre-petition and post-petition bank lenders.

THE COURT ORDERS:

1. The sale of the Store Equipment as described in the Motion is approved and the Trustee is authorized to take any action she deems necessary to complete the sale. The Store Equipment shall be sold to La Feria free and clear of all liens and interests, with all liens and

~~priority attaching to the sale proceeds in the order, with the priority and to the extent that such~~

liens and interests attached to the Store Equipment

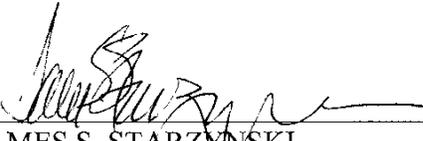
2. La Feria shall pay purchase price in the amount of \$200,000 for the Store Equipment directly to Heller, care of Heller's counsel identified below, within ten (10) days of entry of this Order. Heller shall apply the sale proceeds as ordered by the Court in the April 10, 2002 Order.

3. The Store Equipment will be transferred to La Feria, or its assignee, by Bill of Sale, executed by Heller "as is, where is, and with all faults," and shall be further executed by the Trustee on behalf of the Debtor's estate to transfer to La Feria all rights and interests, if any, that the Debtor's estate may have in the Store Equipment. The Bill of Sale shall contain no representations or warranties made by the Debtor, Trustee or Heller, and may include a statement to that effect.

4. The Trustee, on behalf of Debtor's estate, and Heller, on one hand, and Baca, individually, and La Feria, on the other hand, hereby mutually release each other from any and all claims relating to the Store Equipment and/or to Store #954, including without limitation any claims based upon trespass or for rent; provided, however, that Baca and La Feria are not releasing the Debtor's estate from any pre-petition or post-petition rent claim or administrative priority claim that accrued prior to August 31, 2001. The release described herein is effective upon (i) approval of this Order by counsel for Heller, the Trustee, Baca and La Feria, (ii) entry of this Order by the Court, and (iii) completion of the sale authorized herein, including delivery of the executed bill of sale and payment of the consideration described herein. The release described herein is approved.

5. The sale and release described herein are terms of a settlement of disputed claims and defenses between the Debtor's estate and Heller, on one hand, and Baca, individually, and La Feria, on the other hand and are not and shall not be deemed to be an admission by any party and shall not be used against any party hereto except to enforce the terms hereof. By agreeing to the terms of this Order no party admits any wrongdoing or liability with respect to any claims or defenses that were or that could have been raised by any other party.

6. No automatic stay under Fed. R. Civ. P. 62(a) or Bankruptcy Rule 6004(g) applies to this Order.



JAMES S. STARZYNSKI
United States Bankruptcy Judge

APPROVED:

JACOBVITZ, THUMA & WALKER, P.C.

By 
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APPROVED:

MODRALL SPERLING ROEHL HARRIS & SISK, P.A.

By Approved by telephone April 23, 2002

TDW

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APPROVED:

SCOTT, HULSE, MARSHALL, FEUILLE,
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By: Approved by telephone April 24, 2002

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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 25 2002

Mary B. Anderson

STORE EQUIPMENT

		3	48 inch racks with shelves
<u>FRONT OFFICE</u>		2	369 racks with shelves
<u>Quantity</u>	<u>Description</u>	1	Rolling tray rack
1	Major 2 door safe, 41 x 72 in., tan	1	SS 30 x 36 inch table
1	2 door black safe, 34 x 61 inches	2	Hand sinks
1	50 w amp Mod MS 504	1	SS 34-104 inch 3 comp sink
1	Bogen amp	1	Stand microwave oven
1	IBM monitor	1	7 x 14 foot walk in freezer
1	IBM keyboard	1	30 gallon trash cans
1	IBM printer	1	35 x 48 inch vent hood
2	IBM PC	1	86 x 120 inch vent hood
2	IBM monitors	1	Hobart scale
2	IBM keyboards	1	IBM monitor
2	TI 8250 calculators	1	IBM keyboard
3	Casio 250 LA calculators	1	IBM PC with hand scanner
1	office chair	1	IBM cash drawer
6	folding chairs	1	AT&T multi-line phone
3	Keg pumps	1	bug zapper
2	Trash cans	1	Hobart processor
2	AT&T multi-line phones	1	chicken fryer
1	Battery wall clock	1	gas range
<u>DELI</u>		1	30 x 30 work table
<u>Quantity</u>	<u>Description</u>	1	wrapping stand
1	Walk-in cooler 7 x 10 feet	1	30 x 48 SS table
1	Hobart Dishwasher	1	24 x 62 refrigerated case
(next column)			

1	chicken breader	1	8 foot salad case
1	33 x 67 hot table	3	8 foot produce cases
1	credit card machine	3	12 foot produce cases
<u>FRONT END</u>		2	12 foot produce cases
<u>Quantity</u>	<u>Description</u>	1	Hobart labeler
11	IBM PC - registers	2	Hobart PR30 scales
11	IBM keyboards	1	Detecto MCS scale
11	IBM monitors	1	Toledo 2110 scale
11	IBM printers	2	20 x 60 inch cooler shelves
11	IBM scale/scanners	4	29 x 72 inch cooler shelves
11	IBM drawers	3	29 x 96 inch cooler shelves
10	IBM credit card machines	17	slant display tables
10	phone/intercoms	5	48 x 48 inch bins
2	Texas Lottery ticket dispensers	1	wet table

TORTILLERIA

6	magazine/gum racks	<u>Quantity</u>	<u>Description</u>
1	electronic time clock	1	24 x 63 inch SS3 comp sink
<u>PRODUCE</u>		1	hand sink
<u>Quantity</u>	<u>Description</u>	1	floor mixer
1	Hobart SP 15009 scale	1	masa divider
1	AT&T multi-line phone	1	36 x 60 chip table
1	wrapping station	1	chip fryer
1	30 x 72 work table with doors	1	air compressor
1	4 drawer file cabinet	1	vent hood 48 x 96
1	27 x 91 inch 3 compartment sink	1	tortilla press
1	walk-in cooler - 17 x 27 foot	1	masa feeder
(next column)			

1	masa cutter		
1	oven		
2	conveyors	1	brown double door 2 door cabinet
1	tortilla iron		
1	tortilla counter	24	6 door lockers
1	30 x 36 SS table	6	5 door lockers
3	20 gallons flour bins	1	Sharp microwave Carousel II with cart
18	16 x 30 plastic trays	1	2 x 2 foot tables
2	flour tubs	8	chairs
2	30 gallons flour bins	1	bug zapper
1	48 x 96 foot hood	1	3 x 4 foot cork bulletin boards
2	28 x 76 tortilla display racks	1	2 x 2 x 3 trash can
2	28 x 84 tortilla display racks	1	2 foot step ladder
1	refrigerated masa case	1	2 level stocking cart
1	48 x 51 inch display table		

BREAK ROOM

Quantity Description

BACK ROOM

Quantity Description

1	platform scale (no weights)
1	2 drawer desk
1	Sharp EL 119 calculator
2	Catapiller crown hand jack
1	Hoshizaki ice maker
1	ice crusher
4	stocking carts
1	SS cooler rack - non-operative

(next column)

FLOWER

Quantity Description

1	sink
1	work counter with 3 doors & 6 drawers
1	AT&T multi-line phone
1	trash can
7	41 stair step floral display units
1	8 foot x 6 inch refrigerated display case

BAKERY

Quantity Description

2	8 foot 5 door cases for donuts
1	8 foot refrigerated pastry case closed

1	8 foot refrigerated cake case open	1	12 foot low display meat
1	6 foot refrigerated deli case open with trays in back	2	12 foot Ref Disp, Ham, cheese & salad
1	8 foot closed deli case	1	8 foot Ref. disp, pizza
1	6 foot hot table -2 foot open front	3	24 foot HW gondolas both sides
1	Bunn 3 pot coffee maker	3	19 foot HW gondolas both sides
1	AT&T multi-line phone	1	32 foot gondola
1	60 quart mixer	1	50 foot gondola
1	Amana microwave oven	1	AT&T multi-line phone
1	3 door refrigerator	14	52 foot gondolas 2 sided
6	oven racks	1	52 foot soda rack
100	oven trays	2	end racks
1	20 gallon flour barrel	2	20 foot gondolas
1	proofers	3	52 foot gondola 1 sided
2	30 x 72 tables	1	82 x 78 inch floral display case
1	30 x 96 work table	16	8 foot coffin freezer
1	dough divider	8	end cap coffin freezers
1	oven	8	5 foot freezers
1	balance scale	6	12 foot refrigerated dairy display
2	48 x 78 display tables	2	8 foot refrigerated dairy display
1	dough shaper	4	12 foot refrigerated beer display
60	17 x 27 donut trays	2	12 inch refrigerated cold cuts display
25	9 x 27 donut trays	1	8 inch refrigerated cold cuts display
4	folding tables		<u>MEAT</u>
3	Husmann 12 foot meat display cases		<u>Quantity</u>
2	Husmann 8 foot meat display cases	1	<u>Description</u>
(next column)		5	13 1/2 x 33 1/2 foot walk in freezer
			2 x 6 foot racks

4	rolling racks	1	4 x 14 foot shelves in cooler
2	2 x 4 foot racks	1	6 x 14 foot floral walk-in with 20 foot gondola and shelving
2	2 x 6 foot		
1	2 1/2 x 4 foot rack	1	scrubbing machine with chain covermatic 260B
2	lug dolly	1	gas Honda buffer
1	2 x 6 foot work table	1	electric buffer

3 2 x 8 foot work tables

OFFICE EQUIPMENT

2	Hobart saws	<u>Quantity</u>	<u>Description</u>
1	6 door locker	1	black desk
1	Hobart meat grinder	1	brown top desk with no drawers
1	2 x 4 rack	2	4 drawer filing cabinets

1	Hobart scale & wrapper fastpak	1	small refrigerator
1	Hobart slicer	2	lateral filing cabinets
1	Hobart tenderizer	2	29 x 68 inch folding tables
		1	computer desk unit (gray)
		1	camera surveillance unit

GMD BACK ROOM

<u>Quantity</u>	<u>Description</u>
2	4 drawer file cabinets
1	6 foot ladder
1	12 foot ladder
1	2 foot ladder
1	card board baler
1	16 x 25 foot walk-in freezer with shelves
1	20 x 14 foot milk walk-in cooler
1	14 x 49 foot beer walk-in cooler

OTHER

All other equipment, furniture, fixtures, and property in or on the premises at 317 S. Main Street, Anthony, Texas in which the Debtor has an interest, other than items or equipment leased by the Debtor from Petroleum Capital, Comdisco, Compaq, Econocom, Fleet (Savin), Sensomatic, or Texas Medical.