

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,
a Delaware corporation,

Case No. 7-01-10779 SA
Chapter 7

Debtor.

**ORDER ON TRUSTEE'S MOTION TO SELL PERSONAL PROPERTY FREE AND
CLEAR OF LIENS AND INTERESTS, AND FOR ORDER GRANTING THE
TRUSTEE ACCESS TO CERTAIN FORMER STORES**

This matter came before the Court on the Chapter 7 Trustee's (the "Trustee's") Motion To Sell Personal Property Free and Clear of Liens and Interests, and for Order Granting the Trustee Access to Certain Former Stores, filed April 24, 2002 and docketed as #1642 (the "Motion"), and the objection thereto filed by TGAAR Properties, Inc. ("TGAAR"), and the Court, being duly advised in the premises, HEREBY FINDS:

- A. On February 8, 2001, the Debtor commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
- B. By August 31, 2001, the Debtor closed its grocery stores and ceased operating as a retail grocery business.
- C. On December 19, 2001, the case was converted to a Chapter 7 case, and the Trustee was appointed the Chapter 7 trustee.
- D. The estate owns most of the personal property in former stores ## 866, 883, 905, 911, 927, 949, and 966, such as shelves, refrigeration units, bakery equipment and fixtures, deli equipment, meat department equipment, etc. (together, the "Store Equipment"). The Store Equipment does not include any personal property that is leased to the Debtor by third parties (the "Third Party Leased Property").
- E. The Trustee has sought Court authority to conduct auction sales of the Store Equipment. Each auction sale would be conducted on site, at the former store location.
- F. The Debtor has asked Walter Parker to conduct the auctions of the Store Equipment. Mr. Parker has agreed to conduct the auctions on the same terms and conditions as

the auctions he has already conducted for the Debtor, namely, payment of a 20% commission and reimbursement of certain out-of-pocket expenses.

G. As part of the auction process, Mr. Parker would remove all of the Store Equipment from each of the former stores, and would leave them in a “broom-clean” condition. Mr. Parker would leave the Third Party Leased Property in each former store, if any such property remains.

H. The Trustee would like to conduct the auctions of the Store Equipment in former stores #911 and #966 on May 28, 2002 and May 30, 2002, respectively, as the landlords have demanded that the Trustee remove the Store Equipment in those locations as soon as possible.

I. With respect to the Store Equipment in the other locations, the Trustee requests authority now to conduct auction sales at a later date, to be determined by the Trustee and Walter Parker. The authority requested with respect to former store ## 927 and 949 would be subject to the agreement between the Trustee and LaSalle Bank, N.A. set out in the Court’s Supplemental Order on Third Motion to Sell Personal Property Free and Clear of Liens and Interests, and for Order Granting the Debtor Access to Certain Former Stores, entered May 8, 2002 and docketed as #1655 (the “May 8, 2002 Order”).

J. The Trustee also requests a Court order giving the Trustee and Walter Parker sufficient access to all of the former stores to prepare for and conduct the auctions.

K. It is in the best interests of the estate and its creditors to approve the auction sales of the Store Equipment described above in accordance with the terms and conditions set forth herein.

L. The only parties that claim a lien or other interest in the Store Property are the Debtor’s pre- and post-petition secured lenders (the “Lenders”) and, with respect to former store #966, TGAAR, who asserts a landlord’s lien on the Store Property in former store #966.

M. Under the Motion, the Store Equipment would be sold free and clear of liens and interests, with all liens and interests attaching to the sale proceeds. The Store Equipment would be transferred by the Trustee "as is and where is," with no representations or warranties made by the Trustee or the estate.

It is hereby ORDERED:

1. Auction Sales. The Debtor has the authority to conduct an auction sale of the Store Equipment at former stores #866, 883, 905, 911, 927, 949, and 966. The Debtor may use Walter Parker to conduct the auction, and may pay Mr. Parker a 20% commission, and reimbursement of certain out-of-pocket expenses. Mr. Parker's fee and expenses will be paid within 10 days of the completion of the auction and a proper accounting of the proceeds thereof. As part of the auction process, Mr. Parker shall remove all of the Store Equipment from each of the former stores, and would leave them in a "broom-clean" condition. Mr. Parker would leave the Third Party Leased Property in each former store, if any such property remains.

2. Access. The Debtor and/or Walter Parker is hereby granted access to the former stores as is reasonably needed to conduct auctions of the Auction Store Equipment.

3. Alternative Private Sale. If prior to the proposed auction sale of the Store Equipment at any location the Trustee enters into an agreement to sell such equipment by private sale, the Court hereby approves such private sale, so long as the estate's secured lenders agree in writing to such private sale and, with respect to former store #966 only, TGAAR consents in writing to such private sale.

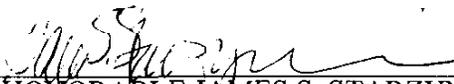
4. Sale of Store Equipment at ##927 and 949 subject to the May 8, 2002 Order. The Trustee's authority to sell the Store Equipment at former stores ## 927 and 949 is subject to the agreement between the Trustee and LaSalle Bank, N.A. set out in the May 8, 2002 Order.

5. No Representations. All Store Equipment will be sold "as is, where is" subject only to the representation that the Debtor owns the property.

6. Sale Free and Clear of Liens. All Store Equipment will be sold free and clear of any liens and encumbrances of any kind or nature whatsoever, with all of such liens and encumbrances to attach to the proceeds of the sale to the same extent, priority, and validity as on the property.

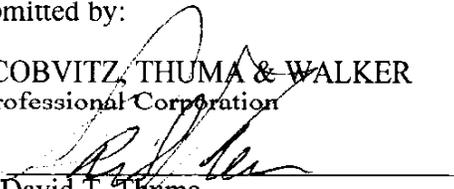
7. Application of Proceeds. All proceeds will be subject to all existing financing orders; provided, however, that the net proceeds from the sale of the Store Equipment in former store #966 shall be held by the Trustee pending a later ruling by the Court on the lien and other claims of TGAAR.

8. This Order shall be effective immediately upon entry. No automatic stay under Fed. R. Civ. P. 62(a) or Bankruptcy Rule 6004(g) applies to this Order.


THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

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I hereby certify that I mailed
a true copy of the above to listed
counsel and parties on the above
file-stamped date.

Bill Petersen