

UNITES STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

IN RE:)
)
FURR'S SUPERMARKETS, INC.,) Case No. 01-10779-SA
)
Debtor.) Chapter 11

POST-CLOSING
SECOND ORDER ARISING FROM EMERGENCE HEARING SUPPLEMENTING FINAL
ORDER (1) AUTHORIZING DEBTOR TO OBTAIN SECURED FINANCING, (2)
GRANTING ADEQUATE PROTECTION AND (3) GRANTING OTHER RELIEF, TO
PERMIT SHORT-TERM FINANCING
AND USE OF CASH COLLATERAL

Upon the Motion (I) For Second Order Supplementing Final Authorizing Debtor To Obtain Secured Financing, And For Use Of Cash Collateral, In October, 2001, (II) To Establish Procedure For Use Of Cash Collateral In Subsequent Months, And (III) For Expedited Preliminary Hearing To Avoid Irreparable Harm, filed September 21, 2001, (the "Motion") by Furr's Supermarkets, Inc., debtor and debtor-in-possession (the "Debtor"), pursuant to which the Debtor seeks the entry of an order authorizing it to use the cash collateral of, and borrow money from, Metropolitan Life Insurance Company ("MetLife"), Fleet Capital Corporation ("Fleet"), Bank of America, N.A. ("BofA") and Heller Financial, Inc. ("Heller"), for itself as a Lender and as agent for the Lenders (collectively, MetLife, Fleet, BofA and Heller shall be referred to as the "Lenders"), and to give security therefor; the Court having examined the Motion; the Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief dated March 14, 2001 (the "Final Financing Order") and the Final First Order Supplementing Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief, entered September 25, 2001 (the

“First Supplemental Financing Order”);¹ the Court having heard the statements of counsel and the evidence in support of and in opposition to the motion resulting in the First Supplemental Financing Order at a hearing before the Court; on September 21, 2001 the Debtor having served a copy of the Motion and notice of the emergency hearing thereon on the persons on the limited mailing list maintained in connection with this case and transmitted copies by facsimile to counsel listed on Exhibit B to the Certificate of Service filed September 24, 2001; and it appearing to the Court that (i) the Court has jurisdiction to enter this Order pursuant to 28 U.S.C. §§157(b)(2) and 1334, (ii) this is a core proceeding as defined in 28 U.S.C. §157(b)(2) and (iii) notice of the Motion and the emergency and final Hearings were adequate under the circumstances;

THE COURT FINDS, IN ADDITION TO THE ORAL FINDINGS OF FACT AND CONCLUSIONS OF LAW ANNOUNCED PURSUANT TO BANKRUPTCY RULE 7052, THAT:

- A. The Termination Date of the DIP Facility has occurred and has been declared and noticed.
- B. The Debtor and the Lenders agree that the Aggregate Proceeds (excluding, except as otherwise provided in the First Supplemental Financing Order, Avoidance Action recoveries, if any) constitute cash collateral of the Lenders. The Official Committee of Unsecured Creditors asserts that some portion of the Aggregate Proceeds might not constitute cash collateral of the Lenders.
- C. The Debtor desires that the Lenders make available to it post-petition credit and/or cash collateral for weeks ended October 6, 2001, October 13, 2001, October 20,

¹ Capitalized terms used herein and not otherwise defined have the meanings assigned in the Final Financing

2001, and October 27, 2001 solely to fund the types and amounts of itemized expenditures set forth in the Budget attached to this Order (the "October Budget"). Lenders have not consented to the use of cash collateral other than as set forth herein and the Debtor has no other source of financing.

D. The terms of this Order have been negotiated at arms-length with all parties represented by experienced counsel, are fair and reasonable under the circumstances, are for reasonably equivalent value and fair consideration, and are in good faith as that term is used in section 364(e) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). Accordingly, the Lenders, in making advances pursuant to this Order, are entitled to the protections described in section 364(e) of the Bankruptcy Code.

E. The use of cash collateral and secured financing approved by this order is necessary to prevent immediate and irreparable harm to the estate pending a further emergency hearing, and a final hearing, on the Motion.

THEREFORE IT IS HEREBY ORDERED THAT:

1. The Debtor is hereby authorized to borrow money from the Lenders for the week ended October 6, 2001 solely to fund the types and amounts of itemized expenditures set forth in the October Budget for that week, which the Lenders have agreed to fund (including funding of obligations for such itemized expenditures incurred during such week in accordance with the first week of the October Budget that are unpaid as of the date of any default or the expiration of the Short Term Budget). As adequate protection, any amounts of Aggregate Proceeds used (other than to repay indebtedness owed to the Lenders), including all funds used by the Debtor since the payment of the DIP Indebtedness even if used prior to the date of this Order (together with loans made pursuant to this Order, the "Advances"), shall be secured by a replacement lien

Order and First Supplemental Financing Order.

and/or in the First Supplemental Financing order to reclaim, reapply and reallocate in respect of any monies; provided that, notwithstanding anything else in this order, the provisions of this Order grant the Lenders the right to apply Avoidance Action Collateral only to repayment of Advances, other than Advances, if any, to pay any claims presently prior to the interests of the Lenders in the Sale Proceeds or Aggregate Proceeds (without prejudice to any rights, benefits and provisions granted in favor of any of the Lenders under the Final Financing Order and related documentation, all of which rights, benefits and provisions remain extant and unlimited by this Order).

4. The provisions of this Order shall be binding upon and inure to the benefit of the Lenders, the Debtor and their respective successors and assigns to the maximum extent permissible under applicable law, including, without limitation, any trustee, examiner or responsible person appointed in this case or any subsequent Chapter 11 or Chapter 7 case.

5. The Debtor shall not, without the Lenders' prior consent, seek to modify this Order. Notwithstanding anything contained herein, if any provision of this Order is hereafter modified by Court order, such modifications shall not affect the validity of any DIP Indebtedness outstanding immediately prior to the effective time of such modification, or the validity or enforceability of any lien, priority or right authorized hereby with respect to any such DIP Indebtedness. The rights, benefits and provisions granted in favor of any of the Lenders hereunder or under the Final Financing Order and related documentation shall continue notwithstanding repayment of DIP Indebtedness.

6. Each of the terms and conditions hereof constitutes a part of this Court's authorization under section 364(e) of the Bankruptcy Code, and is therefore, subject to the protections contained in section 364(e) of the Bankruptcy Code.

7. All terms of the First Supplemental Financing Order remain in effect and are not superceded by this Order.

IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Submitted 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:

SEP 26 2001

Mary B. Anderson

*Approved
Paul M. St. John
for Heller & Asst*

*Approved
Neil Gollub
for Premier Distributing
Company, Inc*

*Approved as to form only
William J. Davis
for UCC
Ron E. Cliff
Assistant U.S. Trustee*

*Approved
Kurt M. B. ...
Heller & Asst*

POST CLOSING OPERATING BUDGET

	Wk End <u>10/06/01</u>	Wk End <u>10/13/01</u>	Wk End <u>10/20/01</u>	Wk End <u>10/27/01</u>
HEADCOUNT	23	23	23	23
PAYROLL				
SALARIES	32.0	32.0	32.0	32.0
BENEFITS/TAXES	2.6	2.6	2.8	2.8
TOTAL PAYROLL	<u>34.6</u>	<u>34.6</u>	<u>34.8</u>	<u>34.8</u>
CONSULTING FEES	8.6	8.6	8.6	8.6
RENT	25.0	-	-	-
OPERATING COSTS				
CHAIRMAN/VICE CHAIRMAN	-	-	-	50.0
DATA CENTER	14.0	10.0	10.0	10.0
UTILITIES	2.0	2.0	2.0	2.0
TELEPHONE	2.2	2.2	2.2	2.2
SUPPLIES	0.5	0.5	0.5	0.5
HOUSEKEEPING	0.2	0.2	0.2	0.2
SECURITY	0.3	0.3	0.3	0.3
POSTAGE	0.5	0.5	0.5	0.5
MISC EXPENSE	5.6	5.6	5.6	5.6
TAXES	-	-	-	-
TOTAL OPERATING COSTS	<u>25.3</u>	<u>21.3</u>	<u>21.3</u>	<u>71.3</u>
	<u>93.5</u>	<u>64.5</u>	<u>64.5</u>	<u>114.5</u>
SUB TOTAL CUM	<u>93.5</u>	<u>158.0</u>	<u>222.5</u>	<u>337.0</u>
JTW	-	-	50.0	-
CARRYING/CLOSURE COSTS-WHSE	104.0	^{114.0} 10.0	13.0	13.0
ADMIN EXPENSE	-	-	TBD	-
RETENTION	-	-	-	76.0
SUB TOTAL CUM	<u>104.0</u>	<u>10.0</u>	<u>63.0</u>	<u>89.0</u>
	<u>104.0</u>	<u>114.0</u>	<u>177.0</u>	<u>266.0</u>
GRAND TOTAL CUM	<u>107.5</u>	<u>218</u> <u>74.5</u>	<u>127.5</u>	<u>203.5</u>
	<u>107.5</u>	<u>272.0</u>	<u>399.5</u>	<u>603.0</u>

93.5

EXHIBIT A