

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED  
OFFICE OF THE CLERK  
02 MAR -7 AM 9:57  
FEDERAL BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

In re

FURR'S SUPERMARKETS, INC.

Case No. 07-01-10779 SA

**STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

El Paso Properties Corp. and Janus Financial Corporation, appellants, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, submit the following statement of the issues to be presented on their appeal from the "Order Extending Time Within Which Trustee May Assume or Reject Unexpired Lease of El Paso Distribution Center". The two questions presented on this appeal both concern the application of 11 U.S.C. §365(d)(3) to payment obligations (specifically, obligations to pay real estate taxes and a rental installment) arising under an unexpired lease of commercial real estate (the "Lease") as to which the debtor is the lessee. Section 365(d)(3) provides in relevant part that: "[t]he trustee shall timely perform all the obligations of the debtor ... arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected ...". The specific questions presented on this appeal are as follows:

1. Whether payment obligations that first became due and payable under the terms of the Lease after the order for relief are obligations that, as "obligations of the debtor ... arising from and after the order for relief," the trustee must timely pay in their full face amount under Section 365(d)(3); or whether, alternatively, the trustee must pay only that portion of the obligations that accrued after the order for relief?

1600

2. Whether interest, accruing after the order for relief on a payment obligation that first became due and payable under the terms of the Lease prior to the order for relief, is an "obligation of the debtor ... arising from and after the order for relief" that the trustee must timely pay under Section 365(d)(3)?

party to this appeal, listed below, by United States mail, first-class postage prepaid:

David T. Thuma  
Jacobvitz, Thuma & Walker  
500 Marquette NW, Suite 650  
Albuquerque, NM 87102  
(505) 766-9272  
Attorneys for Yvette J. Gonzales  
Chapter 7 Trustee for Furr's Supermarkets, Inc.,  
Appellee