

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
FURRS SUPERMARKETS, INC.
Debtor.

No. 11-01-10779 SA

SUPPLEMENTAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR APPROVAL
OF DEBTOR'S MOTION TO SELL ASSETS

On Friday, June 29, 2001, the Court conducted a final hearing on the Motion by Furr's Supermarkets, Inc. to Sell Some or All of Debtor's Operating Assets (Doc. 542). At the conclusion of the hearing, the Court entered oral findings of fact and conclusions of law, as permitted by Rule 7052 of the Federal Rules of Bankruptcy Procedure, in support of its ruling granting the relief requested in the motion. At the beginning of the ruling, the Court reserved the right to make additional findings of fact and conclusions.

The Court further finds and concludes that the provisions of 11 U.S.C. §363(f) have been met. The liens that currently encumber the assets to be sold will attach to the proceeds of the sale. The New Mexico Taxation and Revenue Department agreed that the sale could take place and that it would litigate its issues with the Debtor afterward. Section 363(f)(2).

The objections of the liquor wholesalers, to wit, Premier Distributing Company, New Mexico Beverage Company, Joe G.

Maloof Company, Desert Eagle Distributing, Inc. and others, that the property cannot be sold because the Debtor has not shown that the value of the sale exceeds the aggregate value of the liens on the collateral securing their claims, are overruled. Section 363(f)(3). To the extent that the liquor wholesalers in fact have the most senior priority on the Debtor's liquor licenses, there is no question that their claims, to the extent they are valid, will be fully covered. To the extent that the liquor wholesalers have liens which are junior to those of other secured creditors, or not valid at all or are overstated as to value, the full value of the collateral in which the wholesalers have a perfected interest will be available to satisfy the liens against it. In re Collins, 180 B.R. 447, 450-51 (Bankr. E.D. Va. 1995); In re Terrace Gardens Park Partnership, 96 B.R. 707, 712-14 (Bankr. W.D. Tex. 1989); In re Beker Industries Corp., 63 B.R. 474, 475-77 (Bankr. S.D.N.Y. 1986). The Debtor should not be deprived of the ability to invoke the Code's provisions, specifically §506(a), that allow it to limit a lien to the value of the collateral securing it, in order to facilitate its reorganization. Upholding the liquor wholesalers' objection to the sale would have that result. And this is not a case where the estate seeks to sell a single asset, clearly

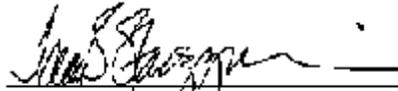
fully encumbered, such that the estate has nothing to gain from the sale, other than perhaps to generate a trustee's fee or exercise random control over the asset.

It is also the case that the property securing the wholesalers' claims may be sold pursuant to §363(f)(5), since the liquor wholesalers could be compelled to accept "a money satisfaction of such interest". Scherer v. Federal National Mortgage Association (In re Terrace Chalet Apartments, Ltd.), 159 B.R. 821, 829 ((N.D. Ill. 1993); In re Healthco International, Inc., 174 B.R. 174, 176-77 (Bankr. D. Mass. 1994); In re Grand Slam U.S.A., Inc., 178 B.R. 460, 461-62 (E.D. Mich. 1995).

The same considerations apply to the objections of McDonnell Douglas Finance Corporation, which are also overruled, to the extent that the MDFC contracts are construed as secured transactions. To the extent they are construed as executory contracts, a matter to be decided at a later date, then MDFC has no need of any such protection pursuant to §363(f).

In its oral ruling on June 29, the Court found explicitly that the Debtor's circumstances constituted a sufficient emergency that justified sale of the assets as proposed in the Asset Purchase Agreement with Fleming outside of a plan. The

Court reiterates that finding to make clear the additional factual predicate, if one is needed, for the foregoing findings and conclusions.



Honorable James S. Starzynski
United States Bankruptcy Judge