

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
FLEMING COMPANIES, INC., et al.,)	
)	Case No. 03-10945 (MFW)
Debtors.)	(Jointly Administered)
_____)	

NOTICE OF WITHDRAWAL OF PROOF OF CLAIM NO. 9881

NOW COMES Home Depot U.S.A., Inc. and, pursuant to Fed.R.Bankr.P. 3006 and Section 5(d) of that certain Settlement Agreement and Release by and among Home Depot U.S.A., Inc., Ronald B. Griffin, Fleming Companies, Inc., and others, hereby withdraws Proof of Claim No. 9881 previously filed by it in this Chapter 11 bankruptcy case. A true and correct copy of Proof of Claim No. 9881 is attached hereto as Exhibit "A."

This 12th day of January, 2005.

Respectfully submitted,

KING & SPALDING LLP

/s/ James A. Pardo, Jr.
James A. Pardo, Jr.
Georgia Bar No. 561206
191 Peachtree Street
Atlanta, Georgia 30303-1763
Telephone: (404) 572-4600
Telecopier: (404) 572-5149

ATTORNEY FOR HOME DEPOT U.S.A., INC.

Packet # 9932
eod 1/12/05

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE PROOF OF CLAIM

Name of Debtor: **FLEMING COMPANIES, INC.** Case Number: **03-10945 (MFW)**



NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property): **HOME DEPOT U.S.A., INC.**

Name and address where notices should be sent:
James A. Pardo, Jr.
King & Spalding, LLP
191 Peachtree Street, N.E.
Atlanta, GA 30303
Telephone number: (404) 572-4600

- Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if the address differs from the address on the envelope sent to you by the court.

Account or other number by which creditor identifies debtor: _____

Check here replaces if this claim amends a previously filed claim, dated: _____

This Space is for Court Use Only

1. Basis for Claim:
- Goods sold
 - Services performed
 - Money loaned
 - Personal injury/wrongful death
 - Taxes
 - Other Tortious interference with contract. See Exhibits A & B
- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Wages, salaries, and compensation (fill out below)
- Your SS #: _____
- Unpaid compensation for services performed
- From _____ to _____
- (date) (date)

2. Date debt was incurred: **Prior to 4/1/03** 3. If court judgment, date obtained: _____

4. Total Amount of Claim at Time Case Filed: **\$7,000,000 (estimated; see Exhibit A)**

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim:

Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

Real Estate Motor Vehicle

Other: _____

Value of Collateral: \$ _____

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____

6. Unsecured Priority Claim.

Check this box if you have an unsecured priority claim

Amount entitled to priority \$ _____

Specify the priority of the claim:

- Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3)
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4)
- up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7)
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - specify applicable paragraph of 11 U.S.C. § 507(a)(_____)

*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

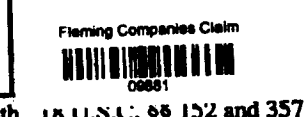
FILED
 SEP 10 2003
BMC

Date: **9-8-03**

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

James A. Pardo, Jr.

BY: **James A. Pardo, Jr., Attorney**



Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**FLEMING COMPANIES, INC.
BANKRUPTCY CASE NO. 03-10945 (MFW)**

**EXHIBIT A TO PROOF OF CLAIM
OF HOME DEPOT U.S.A., INC.
AGAINST FLEMING COMPANIES, INC.**

The following constitutes a brief summary of the claims held by Home Depot U.S.A., Inc. ("Home Depot") against Fleming Companies, Inc. (the "Debtor") and its bankruptcy estate. Home Depot reserves the right to amend and/or supplement this Proof of Claim in all respects, including, without limitation, in order to add additional documentation supporting its claim.

Prior to the Debtor's Chapter 11 bankruptcy case, Home Depot sued the Debtor and Ronald B. Griffin, Fleming's then-Chief Information Officer and Executive Vice President, in the Court of Chancery of the State of Delaware for multiple claims arising out of Mr. Griffin's violation of his contractual obligation not to solicit employees from Home Depot -- his employer immediately before joining the Debtor -- and not to disclose confidential information. The action was docketed and remains pending as Civil Action No. 19649 (the "Pre-Petition Action"). In the Pre-Petition Action and in this Proof of Claim Home Depot asserts claims against the Debtor for damages for tortious interference with contract.

The documents underlying Home Depot's claim against the Debtor, including the various pleadings that have been filed in the Pre-Petition Action, are voluminous, and copies of those documents are not attached to this Proof of Claim.

On information and belief, on and as of April 1, 2003, (the "Petition Date"), the Debtor was indebted and liable to Home Depot in an amount not less than \$7 million as a result of the Debtor's pre-Petition Date tortious acts more particularly described in the Pre-Petition Action.

Home Depot reserves the right (i) to move the Bankruptcy Court pursuant to 11 U.S.C. § 362(d) to lift the automatic stay to permit the Pre-Petition Action to move forward; (ii) to move the Bankruptcy Court to estimate this claim for purpose of allowance pursuant to 11 U.S.C. § 502(c); and (iii) to amend or supplement this Proof of Claim in all respects.

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE		PROOF OF CLAIM
Name of Debtor FLEMING COMPANIES INC		Case Number 03 10945 (MFW)
NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A request for payment of an administrative expense may be filed pursuant to 11 U S C § 503		
Name of Creditor (The person or other entity to whom the debtor owes money or property) HOME DEPOT U S A INC		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case <input checked="" type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court
Name and address where notices should be sent James A Pardo Jr King & Spalding LLP 191 Peachtree Street N E Atlanta GA 30303 Telephone number (404) 572-4600		
Account or other number by which creditor identifies debtor		Check here This Space is for Court Use Only <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim dated _____
1 Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other Tortious interference with contract See Exhibits A & B		<input type="checkbox"/> Retiree benefits as defined in 11 U S C § 1114(a) <input type="checkbox"/> Wages salaries and compensation (fill out below) Your SS # _____-_____ Unpaid compensation for services performed From _____ to _____ (date) (date)
2 Date debt was incurred Prior to 4/1/03		3 If court judgment, date obtained
4 Total Amount of Claim at Time Case Filed If all or part of your claim is secured or entitled to priority also complete Item 5 or 6 below <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges		\$7,000,000 (estimated, see Exhibit A)
5 Secured Claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff) Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim if any \$ _____		6 Unsecured Priority Claim <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim <input type="checkbox"/> Wages salaries or commissions (up to \$4 650) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor s business whichever is earlier - 11 U S C § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan 11 U S C § 507(a)(4) <input type="checkbox"/> up to \$2 100* of deposits toward purchase lease or rental of property or services for personal family or household use - 11 U S C § 507(a)(6) <input type="checkbox"/> Alimony maintenance or support owed to a spouse former spouse or child - 11 U S C § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U S C § 507(a)(8) <input type="checkbox"/> Other - specify applicable paragraph of 11 U S C § 507(a)(_____)
7 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim 8 Supporting Documents Attach copies of supporting documents such as promissory notes purchase orders invoices itemized statements of running accounts contracts, court judgments mortgages, security agreements and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available explain If the documents are voluminous attach a summary 9 Date-Stamped Copy To receive an acknowledgment of the filing of your claim enclose a stamped self addressed envelope and copy of this proof of claim		<div style="font-size: 2em; font-weight: bold; margin-bottom: 10px;">FILED</div> <div style="font-size: 1.5em; font-weight: bold; margin-bottom: 10px;">SEP 10 2003</div> <div style="font-size: 2em; font-weight: bold; margin-bottom: 10px;">BMC</div> <div style="font-size: 0.8em;">Fleming Companies Claim</div> <div style="font-size: 0.7em;">09881</div>
Date 9-8-03	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney if any) BY: <i>James A Pardo Jr</i> James A Pardo Jr Attorney	
Penalty for presenting fraudulent claim Fine of up to \$500 000 or imprisonment for up to 5 years, or both 18 U S C §§ 152 and 3571		

**FLEMING COMPANIES, INC
BANKRUPTCY CASE NO. 03-10945 (MFW)**

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KING & SPALDING LLP

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191 PEACHTREE STREET
ATLANTA, GEORGIA 30303-1763
MAIN 404/572-4600
FAX 404/572 5100

JAMES A PARDO, JR
DIRECT DIAL 404/572 4794
DIRECT FAX 404/572 5149
jpardo@kslaw.com

September 9, 2003

VIA UPS

Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, California 90245

Re In re Fleming Companies, Inc., et al.,
Bankruptcy Case No 03-10945 (MFW)

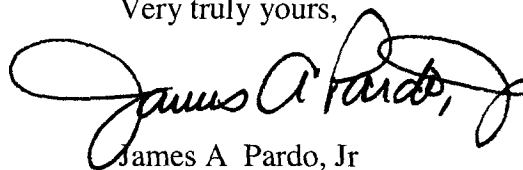
Dear Madame or Sir

I have enclosed with this letter a Proof of Claim for filing in the above-referenced bankruptcy case

I also have enclosed two additional copies of this pleading. Please evidence your receipt and filing by marking the additional copies as having been filed and by returning the file-stamped copies to me in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter

Very truly yours,



James A Pardo, Jr

JAP dc
Enclosure