

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM



551001

Bar Date Ref # 2 NVM-9223

In re  
Fleming Companies, Inc , et al

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.

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.

**Name of Creditor and Address**  
Service Merchandise Company, Inc  
c/o Phillip G Young, Esq  
Bass, Berry & Sims PLC  
315 Deaderick Street, Suite 2700  
Nashville, TN 37238  
0354653551001

Check box if you have never received any notices from the bankruptcy court in this case.

Check box if this address differs from the address on the envelope sent to you by the court.

If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

Creditor Telephone Number (615) 742-7733

CREDITOR TAX ID #

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

Check here  replaces or  amends a previously filed claim dated \_\_\_\_\_

**1 BASIS FOR CLAIM**

Goods sold       Personal injury/wrongful death       Retiree benefits as defined in 11 U.S.C. § 1114(a)

Services performed       Taxes       Wages, salaries and compensation (Fill out below)

Money loaned       Other (describe briefly) \_\_\_\_\_

Your social security number \_\_\_\_\_

Unpaid compensation for services performed from \_\_\_\_\_ to \_\_\_\_\_ (date) (date)

§547 Avoidance Action

**2 DATE DEBT WAS INCURRED**      **3 IF COURT JUDGMENT, DATE OBTAINED**

**4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE**      \$ 41,672.55      \$ \_\_\_\_\_      \$ \_\_\_\_\_      \$ \_\_\_\_\_

(unsecured)      (secured)      (unsecured priority)      (total)

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 above if any \$ \_\_\_\_\_

**6 UNSECURED PRIORITY CLAIM**

Check this box if you have an unsecured priority claim.

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 4/1/01 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 your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4:00 p.m., September 15, 2003, Pacific Daylight Time.

BY MAIL TO  
Bankruptcy Management Corporation  
P O BOX 900  
El Segundo, CA 90245-0900

BY HAND OR OVERNIGHT DELIVERY TO  
Bankruptcy Management Corporation  
1330 East Franklin Avenue  
El Segundo CA 90245

THIS SPACE FOR COURT USE ONLY

**FILED**

SEP 12 2003

**BMC**

DATE SIGNED: 9/11/03

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)

*[Signatures]*

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 AND 3571

See Other Side For Instructions



10776

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In re )  
)  
SERVICE MERCHANDISE COMPANY, ) Case No 399-02649  
INC., et al, ) Chapter 11  
) Judge Paine  
Debtors ) Jointly Administered  
\_\_\_\_\_)  
Service Merchandise Company, Inc , et al <sup>1</sup> )  
)  
Plaintiffs ) Adv Proc No 301-1009A  
)  
vs )  
)  
Fleming Companies, Inc , )  
)  
Defendant ) (Other Landlords)  
)  
)  
)  
)  
)

COMPLAINT TO AVOID PREFERENTIAL TRANSFERS AND  
TO RECOVER AMOUNT OF SUCH TRANSFERS

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<sup>1</sup> Additional Plaintiffs are SMC-HC, Inc , SMC-SPE-1, Inc , SMC-SPE-2, Inc , Service Merchandise Company of Tennessee, Ltd Partnership, Service Merchandise, Company of Texas, Ltd Partnership, A F S Marketing Services, Inc , B A Pargh Company, Inc , Service Merchandise RM, Inc , McNally Supply Company, Promotables, Inc , Service Merchandise Financial Company, Inc , Service Merchandise Company Broad, Inc , Service Merchandise Company No 30, Inc , Service Merchandise Company No 34, Inc , Service Merchandise Company No 35, Inc , Service Merchandise Company No 93, Inc , Service Merchandise Company of Iowa, Inc , Service Merchandise Company of Kansas, Inc , Service Merchandise Company of New York, Inc , Service Merchandise Office Supply, Inc , Service Merchandise Showrooms, Inc , The Toy Store, Inc , Travel Management Consultants, Inc , Wholesale Supply Company, Inc , SMC Aviation, Inc , Homeowners Warehouse, Inc , Service Merchandise Company No 51, Inc , Service Merchandise Indiana Partners, H J Wilson Company, Inc , H J Wilson Company Realty, Inc , and Service Merchandise Company No 99, Inc

Plaintiffs, Service Merchandise Company, Inc ("Service Merchandise") and 31 of its affiliates (the "Affiliate Debtors"), as listed in the footnote to the caption of this adversary proceeding Complaint, debtors and debtors-in-possession in the above-captioned cases (Service Merchandise and the Affiliate Debtors collectively, the "Debtors"), allege upon knowledge as to themselves and their respective acts, and upon information and belief as to all other matters, as follows as its Complaint against Fleming Companies, Inc (83091) (the "Defendant")

Jurisdiction, Venue and Parties

1        This adversary proceeding is brought pursuant to, and under, Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to seek relief in accordance with sections 547(b) and 550 of title 11 of the United States Code, 11 U S C § 101-1330 (the "Bankruptcy Code")

2        The Court has jurisdiction over this subject matter of this adversary proceeding pursuant to 28 U S C § 1334. This adversary proceeding is a core proceeding as to which the Court may enter final judgment under 28 U S C §§ 157(b)(2)(F) and (O)

3        Venue of this action is proper in this Court pursuant to 28 U S C §§ 1408 and 1409(a)

4        Service Merchandise, a Tennessee corporation, and the 31 Affiliate Debtors are Plaintiffs in this adversary proceeding

Procedural Background

5        On March 27, 1999, Service Merchandise and the 31 Affiliate Debtors filed voluntary petitions in this Court for reorganization relief under chapter 11 the Bankruptcy Code

(these "Cases") The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code

6 On March 29, 1999, this Court granted the Debtors' motion for an order consolidating a prior involuntary Chapter 11 petition filed only against Service Merchandise on March 15, 1999 (the "Petition Date"), and for joint administration and procedural consolidation of these chapter 11 cases

### FACTS

7 During the ninety (90) days preceding the Petition Date, one or more transfers (the "Transfers") of property were made to or for the benefit of the Defendant, which Transfers total \$41,672 55 A detailed listing of the Transfers is attached hereto as Exhibit A

8 The Transfers were transfers of interest of property of one or more of the Debtors

9 The Transfers were transfers to or for the benefit of the Defendant

10 The Transfers were transfers for or on account of antecedent debt owed by one of the Debtors before such transfers were made

11 The Transfers were made while the relevant Debtors were insolvent or were presumed to be insolvent

12 The Transfers enabled the Defendant to receive more than the Defendant would have received if (i) these Cases were cases under chapter 7 of the Bankruptcy Code, (ii) the Transfers had not been made, and (iii) the Defendant received payment of such debt to the extent provided by the provisions of the Bankruptcy Code

CLAIM PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. § 547

13 The Debtors incorporate herein each of the allegations contained in Paragraphs 1 through 12 of this Complaint

14 The Transfers are avoidable preferential transfers pursuant to section 547(b) of the Bankruptcy Code and the Debtors may recover the value of the Transfers pursuant to an order of this Court and section 550 of the Bankruptcy Code

WHEREFORE, the Debtors request that the Court enter judgment (i) avoiding each of the Transfers pursuant to section 547(b) of the Bankruptcy Code, and (ii) granting the Debtors a judgment against the Defendant pursuant to section 550 of the Bankruptcy Code for the full amounts of the transfers, with lawful pre- and post-judgment interest and costs, and (iii) grant such other and further relief, at law or in equity, as is appropriate under the circumstances

RESPECTFULLY SUBMITTED



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Charles F. Smith, Esq  
Van C. Durrer, II, Esq  
Skadden, Arps, Slate, Meagher & Flom (Illinois)  
333 West Wacker  
Chicago, IL 60606  
(302) 655-8501  
(302) 651-3001

Attorneys for Debtors and Debtors in Possession

EXHIBIT A

VEND NO	DEFENDANT	CHECK NO	PAID DATE	CHECK AMT	PREPAID	NON PREPAID	CATEGORY
83091	FLEMING COMPANIES IN	40002405	1/7/99	20 051 04	20 051 04	0 00	Other Landlords
83091	FLEMING COMPANIES IN	03243051	3/12/99	41 672 55	0 00	41 672 55	Other Landlords
<b>83091 Total</b>						41 672 55	

LINDA WINFREE  
PARALEGAL  
TEL 615 259 6145  
FAX 615 742 2845

**BASS, BERRY & SIMS PLC**

A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AT LAW

AMSOUTH CENTER  
315 DEADERICK STREET, SUITE 2700  
NASHVILLE TN 37238 3001  
(615) 742 6200

www.bassberry.com

OTHER OFFICES

NASHVILLE MUSIC ROW  
KNOXVILLE  
MEMPHIS

September 11, 2003

**VIA FEDERAL EXPRESS**

Bankruptcy Management Corporation  
1330 East Franklin Avenue  
El Segundo CA 90245

In Re Fleming Companies, Inc  
Case No 03-10945

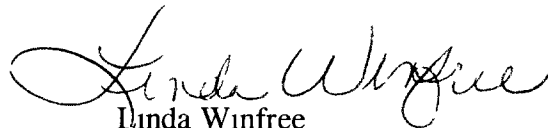
Dear Sir or Madam

Enclosed please find the original and three (3) copies of a Proof of Claim we are filing on behalf of Service Merchandise Company, Inc in the above-noted matter

Please file the original with your office and return a filed-stamped copy to me in the enclosed envelope

Thank you for your assistance with this matter Should you have any questions, please do not hesitate to contact me

Sincerely,



Linda Winfree  
Bankruptcy Paralegal

lw  
Enclosures