IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Fleming Companies, Inc., et al.,[1]	)	Case No. 03-10945 (MFW)
	)	(Jointly Administered)
Debtors.	)	

MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO HONOR PREPETITION OBLIGATIONS TO CUSTOMERS AND TO OTHERWISE CONTINUE CUSTOMER PROGRAMS AND PRACTICES IN THE ORDINARY COURSE OF BUSINESS

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), hereby move the Court for entry of an order authorizing the Debtors to honor certain prepetition obligations to customers and to otherwise continue customer programs and practices in the ordinary course of business (the "Motion"). In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

[1] The Debtors are the following entities: Core-Mark International, Inc.; Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C., Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter-Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

2. The statutory bases for the relief requested herein are sections 105(a), 363(c), 1107(a) and 1108 of title 11 of the United States Code (the "Bankruptcy Code").

BACKGROUND

3. On April 1, 2003 (the "Petition Date"), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or committee has yet been appointed in these cases.

4. The facts and circumstances supporting this Motion are further set forth in the Affidavit of Peter W. Willmott, Interim President and Chief Executive Officer of Fleming Companies, Inc., in Support of Certain First Day Motions, filed contemporaneously herewith.

RELIEF REQUESTED

5. Prior to the Petition Date and in the ordinary course of their businesses, the Debtors engaged in certain practices to develop and sustain a positive reputation in the marketplace for their services. Such practices include, but are not limited to, the Facility Standby Agreement Rebate Programs, the Volume Based Rebate Programs, the PCRA Program, the Vendor Ad Funds Programs, and the Merchandise on Hand Programs (each as defined herein and, collectively, the "Customer Programs"). Several, but not all, of the Customer Programs are described in greater detail below. The common goals of the Customer Programs have been to meet competitive pressures, ensure customer satisfaction, and generate goodwill for the Debtors, thereby retaining current customers, attracting new ones, and ultimately enhancing net revenue.

6. By this Motion, the Debtors request entry of an order pursuant to sections 105(a), 363(c), 1107(a) and 1108 of the Bankruptcy Code authorizing, but not directing, the Debtors, in their business judgment, to (a) perform and honor such of their prepetition obligations related to the Customer Programs as they see fit and (b) continue, renew, replace, implement new, and/or terminate such of the Customer Programs as they see fit, in the ordinary course of business, without further application to the Court.

7. The Debtors desire to continue during the postpetition period those Customer Programs that were beneficial to their businesses and cost-effective during the prepetition period. The Debtors believe that such relief is necessary to preserve, during the postpetition period, their critical business relationships and goodwill for the benefit of their estates. For these and the other reasons set forth herein, it is in the best interests of the Debtors, their estates, and their creditors to honor prepetition obligations in connection with the Customer Programs and continue the Customer Programs as they see fit, in the ordinary course of business.

DISCUSSION

8. The Debtors are seeking to continue the Customer Programs because these programs have been successful business strategies in the past and have generated valuable goodwill, repeat business and net revenue increases. Maintaining these benefits throughout the chapter 11 cases is essential to the continued vitality of the Debtors' businesses, and ultimately to their prospects for a successful reorganization. The Debtors believe, however, that the bankruptcy filing itself could negatively influence customers' attitudes and behavior toward their services, unless the Debtors can take the measures requested by this Motion to alleviate customer

concerns. In particular, the Debtors' goodwill and ongoing business relationships may erode if their customers perceive that the Debtors are unable or unwilling to fulfill the prepetition promises they have made through the Customer Programs. The same would be true if customers perceived that the Debtors will no longer be offering the full package of services or quality of services preferred by their customers. The Debtors, therefore, request the authority to honor all such obligations related to the Customer Programs.

9. The Customer Programs generally, but not exclusively, consist of five (5) separate categories: the Facility Standby Agreement Rebate Programs, the Volume Based Rebate Programs, the PCRA Program, the Vendor Ad Funds Programs, and the Merchandise on Hand Programs (each as defined herein). The following are general descriptions and examples of some (but not all) of the Debtors' Customer Programs.

A. Facility Standby Agreement Rebate Programs

10. The Debtors seek the authority to honor their facility standby agreement rebate programs (the "Facility Standby Agreement Rebate Programs"). Pursuant to the Facility Standby Agreement Rebate Programs, the Debtors enter into agreements with certain of their retailers. A typical Facility Standby Agreement Rebate will provide a credit to a retailer in order to capture or retain a retailer's business for a defined period of time. Pursuant to the Facility Standby Agreement Rebate Programs, retailers are encouraged to purchase more product from the Debtors to obtain a greater rebate, consequently resulting in larger net revenue for the Debtors.

11. Customer confidence and goodwill, as well as revenues, will be severely harmed if the Debtors are prevented from honoring prepetition Facility Standby Agreement Rebate Programs. On the Petition Date, many participating retailers had accumulated substantial amounts in purchases from the Debtors. Of this number, many retailers are approaching the level of purchases that would trigger a rebate. If the Court were not to grant the relief requested, participating retailers would lose any rebate credit for their prepetition purchases of the Debtors' goods, likely resulting in these retailer refusing to continue distributing goods from the Debtors, while initiating a business relationship with the Debtors' competitors.

12. The Debtors believe that maintaining the Facility Standby Agreement Rebate Programs will demonstrate management's confidence in the Debtors and, therefore, enhance the public's confidence in the continued reliability and operations of the Debtors. In that regard, the Debtors believe that the rebates during the Chapter 11 Cases will be more than offset by the revenue from sales made because the Facility Standby Agreement Rebate Programs remain in place.

13. To the extent the Debtors are unable to continue the Facility Standby Agreement Rebate Programs, the Debtors risk isolating certain retailers and possibly encouraging them to select the Debtors' competitors, all to the detriment of the Debtors, their creditors and their estates.

B. Volume Based Rebate Programs

14. The Debtors also seek the authority to honor their various volume-based rebate programs (the "Volume Based Rebate Programs"). The Volume Based Rebate Programs

offer retailers payments based on certain levels of product purchases. Retailers' entitlements to rebates pursuant to such Volume Based Rebate Programs, though applicable to all retail customers of the Debtors, can vary substantially among such customers. The timing of required payment to the retailers vary as well, as they may be due on a monthly, quarterly or annual basis. As with the Facility Standby Agreement Rebate Programs, pursuant to the Volume Based Rebate Programs, retailers are encouraged to purchase more product from the Debtors to obtain a greater rebate, consequently resulting in larger net revenue for the Debtors.

15. As with the Facility Standby Agreement Rebate Programs, many retailers have acquired credits under the Volume Based Rebate Programs prepetition. If the relief was not granted, these retailers would lose their credits, which would likely cause them to purchase from the Debtors' competitors.

16. The Debtors believe that maintaining the rebates for goods purchased prepetition will demonstrate management's confidence in the Debtors and, therefore, enhance the public's confidence in the continued reliability and operations of the Debtors. In that regard, the Debtors believe that the rebates offered in the Chapter 11 Cases will be more than offset by the revenue from sales made because the Volume Based Rebate Programs are in place.

17. The Volume Based Rebate Programs are an integral component of the Debtors' operations. To the extent that the Debtors are unable to continue the Volume Based Rebate Programs, the Debtors risk isolating certain constituencies of customers and possibly encouraging customers to select competitors, all to the detriment of the Debtors, their creditors and their estates. Therefore, it is in the best interests of the Debtors, their estates and their

creditors to honor prepetition obligations of the Volume Based Rebate Programs and to continue the Volume Based Rebate Programs as they see fit in the ordinary course of business.

18. The Debtors estimate that on an annual basis, they make payments of approximately $27.3 million in satisfaction of rebates earned pursuant to the Facility Standby Agreement Rebate Programs and Volume Based Rebate Programs. Given that the Facility Standby Agreement Rebate Programs and Volume Based Rebate Programs generate substantial revenue for the Debtors, and for the other reasons set forth herein, it is in the best interests of the Debtors, their estates, and their creditors to honor prepetition obligations of the Facility Standby Agreement Rebate Programs and Volume Based Rebate Programs and to continue the Facility Standby Agreement Rebate Programs and Volume Based Rebate Programs as they see fit in the ordinary course of business.

C. PCRA Program

19. The Product Cost Reduction Account Program ("PCRA Program") is a program where the Debtors allocate funds issued by their vendors to be distributed to retailers which carry the vendors' products. These funds include vendor discounts and slotting fees received by the Debtors. At times, vendor discounts may not occur until after the retail customer has been invoiced for the product. Rather than re-invoice the customer for the product, the Debtors will credit the amount of the discount to the customer's PCRA account. Slotting fees are those amounts that the vendor will pay the Debtors to carry its product which the Debtors will pass along to the customer through the PCRA.

20. The PCRA Program applies only to those retail customers who utilize the Debtors' FlexPro marketing program. Under the FlexPro programs, grocery, frozen and dairy products are priced at their net acquisition value, which is generally comparable to the net cash price paid by the Debtors' operations. FlexPro customers, in turn, pay fees for specific activities related to the selection and distribution of products, and vendor allowances and service income are passed through to the customer. The Debtors receive funds from the vendors approximately once every four weeks. The Debtors then reconcile the PCRA funds owed to the retailers to the retailer fees owed to the Debtors for the FlexPro program.

21. The Debtors estimate that as of March 21, 2003, the amounts to which their retail customers are entitled pursuant to the PCRA Programs is approximately $4.6 million. Given that the FlexPro program and associated PCRA Program generate substantial revenue for the Debtors, and for the other reasons set forth herein, it is in the best interests of the Debtors, their estates, and their creditors to honor prepetition obligations of the PCRA Program and to continue the PCRA Program as they see fit in the ordinary course of business.

D. Vendor Ad Funds Programs

22. The Vendor Ad Funds Program is part of the Debtors' advertising circular program for its retail customers. Vendors pay the Debtors' advertising dollars (the "Vendor Ad Funds") in order to receive advertising space in various retail circulars. Any portion of the Vendor Ad Funds remaining after the Debtors have offset their costs to complete the advertisement circulars are paid to the Debtors' retailers. The Debtors receive the Vendor Ad Funds on a weekly basis and pay any residual amounts to the retailers on a monthly basis.

23. The Debtors estimate that they receive approximately $36 million per year from vendors and that they turn over approximately 80% of these amounts to their retail customers pursuant to the Vendor Ad Funds Program. Given that the Vendor Ad Funds Program generates substantial revenue for the Debtors, and for the other reasons set forth herein, it is in the best interests of the Debtors, their estates, and their creditors to honor prepetition obligations of the Vendor Ad Funds Program and to continue the Vendor Ad Funds Program as they see fit in the ordinary course of business.

E. The Merchandise on Hand Programs

24. Pursuant to the merchandise on hand programs (the "Merchandise on Hand Programs"), certain of the Debtors' retail customers prepay the Debtors for goods at reduced prices. The Debtors maintain the goods in their inventory until such time as the applicable retail customer needs the product. At any one time, the Debtors have substantial obligations under the Merchandise on Hand Programs to their retail customers.

25. This program, though relatively small in scale, creates incentives for retail customers of certain of the Debtors' distribution centers to purchase a greater volume of the Debtors' product thereby generating additional revenue for the Debtors. Moreover, if the relief requested by this Motion was not granted, retailers entitled to product for which they previously paid would lose their credits, causing a reduction in goodwill toward the Debtors likely causing them to purchase from the Debtors' competitors.

26. The Debtors estimate that as of March 19, 2003, the credits to which their retail customers are entitled pursuant to the Merchandise on Hand Programs is approximately

$1.7 million. Given that the Merchandise on Hand Programs generate substantial revenue for the Debtors, and for the other reasons set forth herein, it is in the best interests of the Debtors, their estates, and their creditors to honor prepetition obligations of the Merchandise on Hand Programs and to continue the Merchandise on Hand Programs as they see fit in the ordinary course of business.

BASIS FOR RELIEF

27. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. Section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice or a hearing. The Debtors submit that continuing, renewing, replacing, initiating and/or terminating their Customer Programs, in the ordinary course of business, is permitted by sections 363(c), 1107(a) and 1108 of the Bankruptcy Code, without further application to the Court.

28. To the extent continuation of the Customer Programs will result in the satisfaction of prepetition obligations of the Debtors, section 105(a) of the Bankruptcy Code authorizes the Court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The purpose of section 105(a) is to ensure a bankruptcy court's power to take whatever action "is appropriate or necessary in aid of the exercise of its jurisdiction." 2 Collier on Bankruptcy, ¶ 105.01 at 105-4-6 (15th ed. 2000). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a

novel concept." In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Under section 105(a), a court "can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); citing, Ionosphere Clubs, 98 B.R. at 177. The Debtors submit that the relief requested in this Motion is critical to the Debtors and is justified under section 105(a) of the Bankruptcy Code.

29. The "necessity of payment" doctrine further supports the relief requested in this Motion. The "necessity of payment" doctrine "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." Ionosphere Clubs, 98 B.R. at 176; see also In re Lehigh & New England Railway Co., 657 F.2d 570, 581 (3rd Cir. 1981) (stating the "necessity of payment" doctrine "teaches no more than, if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of corpus"); In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987). This doctrine is consistent with the paramount goal of chapter 11, which is to facilitate "the continued operation and rehabilitation of the debtor." Ionosphere Clubs, 98 B.R. at 176; see also Dudley v. Mealey, 147 F.2d 268, 271 (2nd Cir.), cert. denied, 325 U.S. 813 (1945) ("let [the debtor] once shut down, and it will lose much of its value. . . . Some priority to [the debtor's prepetition suppliers] may be essential to preservation of the business").

30. As described above, the loyalty and continued patronage of the Debtors' customers is critical to the Debtors' financial health and reorganization prospects. Where

retaining loyalty and patronage of customers is critical to a successful reorganization, this Court granted relief similar to that requested here. See, e.g., In re Eagle Food Centers, Inc., Case No. 00-01311 (RRM) (Bankr. D. Del. March 2, 2000) (authorizing debtors to honor certain prepetition obligations to customers, including deposits and refunds); In re Goss Graphic Systems, Inc., Case No. 99-2756 (PJW) (Bankr. D. Del. July 30, 1999) (same); In re Philip Services (Delaware), Inc., Case No. 99-02385 (Bankr. D. Del. June 28, 1999) (same); In re Harnischfeger Indus., Inc., Case No. 99-2171 (PJW) (Bankr. D. Del. June 7, 1999) (same); In re SGL Carbon Corporation, Case No. 98-2779 (JJF) (D. Del. December 17, 1998) (same); In re Acme Metal Incorporated, et. al., Case No. 98-2179 (MFW) (Bankr. D. Del. September 29, 1998) (same); In re Levitz Furniture, Inc., Case No. 97-01842 (Bankr. D. Del. September 5, 1997) (same).

31. Continuing the Debtors' historical Customer Programs is crucial to the future of the Debtors' businesses. The Debtors' success in reorganizing their businesses depends significantly on their reputation as reliable and retaining the goodwill of their customers. The Debtors' customers rely on the fair and honest customer programs of the Debtors. The Customer Programs are consistent with the Debtors' historical business practices and are consistent with industry practices. The Debtors' inability to honor their Customer Programs would place them at a severe disadvantage relative to their competitors in the marketplace, potentially resulting in a fatal imbalance between the Debtors and their competitors. Failing to continue the Customer Programs described herein will harm the Debtors' reputation irreparably and influence current

and potential customers to do business with one of the Debtors' many competitors. Such consequences would undermine severely the Debtors' reorganization efforts.

32. In addition, many of the customer claims related to the prepetition Customer Programs are potentially subject to offset against prepetition receivables due to the Debtors.

33. If the Debtors are prohibited from honoring prepetition obligations and maintaining the Customer Programs consistent with their past business practices, then customers' lost confidence in the Debtors will damage the Debtors' businesses to an extent that far exceeds the cost associated with honoring prepetition obligations and continuing such practices. The requested order will protect the Debtors' goodwill during this critical time and enhance the Debtors' ability to generate revenue.

34. Accordingly, the Debtors request that they be authorized, but not directed, in their business judgment, to (a) perform and honor such of their prepetition obligations under the Customer Programs as they deem appropriate and (b) continue, renew, replace, implement new, and/or terminate such of the Customer Programs as they deem appropriate, in the ordinary course of business, without further application to the Court.

35. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission

as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE

36. Notice of this Motion has been given to (a) the United States Trustee; (b) counsel to the senior secured lenders; (c) counsel to the indenture trustees; (d) counsel to the ad hoc trade committtee; and (e) counsel to certain PACA claimants. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

NO PRIOR REQUEST

37. No prior Motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order authorizing, but not directing, the Debtors in their business judgment to (a) perform and honor such of their prepetition obligations related to Customer Programs as the Debtors deem appropriate, (b) continue, renew, replace, implement new, and/or terminate such of the Customer Programs as the Debtors deem appropriate, in the ordinary course of business, without further application to the Court and (c) granting such further relief as is just and proper.

Dated: April 2, 2003

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