

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	Case No. 03-10945 (MFW)
FLEMING COMPANIES, INC., ET AL.,)	Jointly Administered
)	Related Document: 13
Debtors.)	Objections Due: 04/14/03 @ 4:00 p.m.
)	Hearing Date: 04/21/03 @ 12:30 p.m.

**LIMITED OBJECTION OF DONALD & JOAN MALTZMAN FAMILY
TRUST TO MOTION FOR ORDER UNDER SECTION 365 OF THE
BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO REJECT
CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

The Donald and Joan Maltzman Family Trust (the "Trust") hereby responds to the Debtors' Motion as follows:

1. By lease dated May 15, 1994, Fleming Foods West, Inc. ("Fleming") and the Trust entered into a lease for the premises at Highway 82 - Island Avenue, Near Walton Drive, LaGrande, Oregon 97850 (the "Premises"). The lease term was for 20 years.
2. Since Fleming took possession of the Premises, it subsequently sub-let the Premises.
3. On April 1, 2003, Fleming and its affiliated entities (the "Debtors") filed voluntary petitions for relief. The Debtors have not paid rent for the month of April.
4. By the Motion, the Debtors are seeking to reject the lease as of the Petition Date, yet the Debtors have not vacated the Premises.
5. Section 365(d) (3) of the Bankruptcy Code requires the debtor in possession to timely perform all post-petition obligations under an unexpired nonresidential real estate lease. One of the purposes of Section 365(d)(3) is to alleviate the difficult position a landlord is placed in when the landlord is forced to provide current services and use of its property without being paid. *See* H.R. Conf. Rep. No, 98-882 (1984), reprinted in 1984 U.S.C.C.A.N. 576, 599 (statement of Sen. Hatch).

Accordingly, a debtor is obligated to perform all the post-petition obligations, including paying rent, until the date of rejection. Here, the Debtors are attempting to use a “rejection” of the Lease to relieve them of their obligations, yet put the Trust in the exact position that 365(d)(3) seeks to prevent because it is being forced to continue to provide services and use of its property while not getting paid. Moreover, the Debtors are benefitting from the sublease to the detriment of the Trust. A “rejection” of a lease where the Debtors are still using the premises should not be permitted.

WHEREFORE, the Trust requests that the Motion be denied and the Debtors be required to pay post-petition rent until the Premises is vacated.

Dated: April 14, 2003

SMITH, KATZENSTEIN & FURLOW LLP

/s/ Kathleen M. Miller

Kathleen M. Miller (ID No. 2898)

800 Delaware Avenue, 7th Floor

P.O. Box 410

Wilmington, DE 19899 (Courier 19801)

Telephone: 302-652-8400

Telecopy: 302-652-8405

Email: kmiller@skfdelaware.com

Attorneys for The Donald and Joan Maltzman Family
Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **14th** day of **April, 2003**, a copy of the foregoing ***Limited Objection of Donald & Joan Maltzman Family Trust to Motion for Order Under Section 365(a) of the Bankruptcy Code Authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property*** was served on the following parties in the manner indicated:

VIA FACSIMILE

Richard Wynne, Esquire
Kirkland & Ellis
77 South Figueroa Street
Los Angeles, CA 90017
Facsimile: 213-680-8500

VIA HAND DELIVERY

Scott D. Cousins, Esquire
William E. Chipman, Jr., Esquire
Greenberg Traurig LLP
The Brandywine Building
1000 West Street, Suite 1540
Wilmington, DE 19801

VIA HAND DELIVERY

Laura Davis Jones, Esquire
Pachulski, Stang, Ziehl, Young,
Jones & Weintraub P.C.
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, DE 19899-8705

VIA FACSIMILE

Andrew P. DeNatale, Esquire
White & Case
1155 Avenue of the Americas
New York, NY 10036-2787
Facsimile: 212-354-8113

VIA HAND DELIVERY

Julie Compton, Esquire
J. Caleb Boggs Federal Building
844 N. King Street, Suite 2313
Lock Box 35
Wilmington, DE 19801

/s/ Kathleen M. Miller

Kathleen M. Miller