

**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)

**Objection Deadline: April 14, 2003 at 4:00 p.m. EST
Hearing Date: April 21, 2003 at 12:30 p.m. EST**

**EMERALD LAKE, LLC’S OBJECTION TO THE MOTION FOR ORDER
PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE AUTHORIZING THE
DEBTORS TO REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL
REAL PROPERTY AND AVIATION EQUIPMENT [Relates to Docket No. 13]**

Emerald Lake, LLC, by and through its counsel, Rachel B. Mersky, Esquire of Monzack and Monaco, P.A., objects to Debtors’ Motion for Order Pursuant to Section 365(a) of the Bankruptcy Code Authorizing the Debtors to Reject Certain Unexpired Leases of Nonresidential Real Property and Aviation Equipment (the “Motion”) and in furtherance thereof states as follows:

1. On April 1, 2003 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. Emerald Lake, LLC is the landlord of nonresidential real property leased by Debtors located at 600 Pencador Drive, Newark, Delaware. On April 2, 2003, a mere day after the filing of the original bankruptcy petition, Debtors filed this Motion seeking to reject Emerald Lake, LLC’s lease of nonresidential real property located at 600 Pencador Drive, Newark, Delaware *nunc pro tunc* to the filing of the bankruptcy.

3. Section 365(a) of the Bankruptcy Code provides: “Except as provided in 765 and 766 of this Title and in Subsections (b), (c) and (d) of this Section, the Trustee, subject to the Court’s approval, may assume or reject any executory contract or unexpired lease of the Debtor.”

4. The plain, unequivocal language of this provision indicates that Court approval is a precondition to a Debtor's rejection of a lease. Monrose Center v. Northeast Consumer Technology Stores, Inc. (In re the Appliance Store, Inc.), 148 B.R. 234, 239 (Bankr. W.D. Pa 1992) (Finding that rejection would be effective on the date the court entered the order proving same).

5. While this Court has allowed debtors to reject leases *nunc pro tunc* to the petition date, the circumstances in which a rejection is allowed prior to the entry of the Court Order must be scrupulously adhered to and include a requirement that: (1) prior to the filing of the motion, the keys were surrendered, the premises surrendered with an unequivocal statement to the landlord of abandonment; (2) the motion is served and filed on the landlord; (3) the motion states that the committee agrees with the motion; and (4) the debtor acknowledges that it will not have the right to withdraw the motion prior to the hearing. In re Namco Entertainment Inc., No. 98-173 (PJW) (Bankr. D.Del.). (A copy of which is attached hereto and incorporated herein by reference).

6. The Debtor in its Motion represent that all of these factors have been met with the exception of a statement that the Committee agrees with the Motion. Clearly, in this case, a Committee had not been formed at the time the Motion was filed, consequently the Committee could not consent to the rejection of these leases.

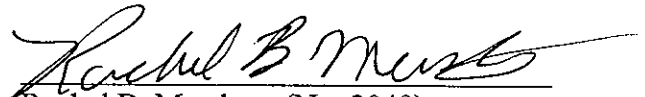
7. In connection with the nonresidential real lease at 600 Pencador Drive, Newark, Delaware, contrary to the representations in the Motion, the Debtors remain in the property and it is the landlord's understanding that they wish to remain in the property until the landlord can relocate them to a smaller space. Furthermore, the Debtors have a subtenant in the property, for

which they continue to receive rent and for which, upon information and belief, they have not sought this Court's approval for the rejection of the sublease.

WHEREFORE, Emerald Lake, LLC requests that this Honorable Court deny the relief sought in Debtors' Motion and for such other and further relief as is just and equitable.

DATED: April 14, 2003

MONZACK AND MONACO, P.A.



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