

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

**ORDER, UNDER 11 U.S.C. §§ 105(a), 503(b), AND 546(c):
(A) ESTABLISHING PROCEDURE FOR TREATMENT
OF RECLAMATION CLAIMS AND (B) PROHIBITING THIRD
PARTIES FROM INTERFERING WITH DELIVERY OF DEBTORS' GOODS**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession in these chapter 11 cases seeking entry of an order (A) establishing a procedure for treatment of reclamation claims and (B) prohibiting third parties from interfering with delivery of the Debtors' goods; and it appearing that the Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and it appearing that the relief requested in the Motion is in the best interests of Debtors and their estates and creditors; and after due deliberation and sufficient cause appearing therefor, it is hereby

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 Unless otherwise indicated herein, all capitalized terms shall have the meaning provided for in the Motion.

ORDERED that the Motion is granted; and it is further

ORDERED that the procedure outlined in the Motion for the treatment and processing of reclamation claims, including the following procedure, is hereby approved as follows:

a. any vendor asserting a claim for reclamation (“Claimant”) must satisfy all requirements entitling it to a right of reclamation under applicable state law and section 546(c)(1) of the Bankruptcy Code;

b. the Debtors will file a report (“Report”), within 90 days of the Court’s entry of an order approving the Motion, listing the valid reclamation claims;

c. at the time the Report is filed, the Debtor will provide to each reclamation claimant a comprehensive, detailed, and customized information packet that sets forth the basis for the reconciled reclamation amount set forth in the Report;

d. each Claimant, upon written request from Debtors, shall provide such additional documentation that may be in Claimant’s possession as is reasonably needed to assist Debtors in the evaluation of the Claimant’s reclamation claim;

e. the Report will provide, as to each Claimant, an accounting that sets forth the following:

- (1). The amount of the claim asserted by Claimant;
- (2). The date of receipt of Claimants’ goods (“Received Date”);
- (3). The date the reclamation demand was sent by the Claimant (the “Demand Date”);

- (4) The goods received within the reclamation period (“Reclamation Goods”);
- (5) The Reclamation Goods on hand at the Demand Date;
- (6) Debtors’ proposed net allowed reclamation claim as to each reclamation demand;

f. the Debtors will supplement the Report with all additional defenses, or legal bases for disallowance of a reclamation demand, that subsequently become known or fully determined, as soon as is possible upon such knowledge or determination;

g. any party to the Debtors’ Chapter 11 cases may request from the Debtors access to a copy of the “file” maintained by the Debtors and used to prepare the Report, as to a specific Claimant. At the request of such specific Claimant, the Debtors shall require any party requesting access to such Claimant’s file to agree to appropriate confidentiality arrangements. The Debtors shall make such file available for inspection by parties to the Debtors’ Chapter 11 cases, upon reasonable prior written notice to counsel for the Debtors and to the Claimant whose file is to be inspected. At the option of the party in interest to a particular Reclamation Demand, and upon written request of the interested party, the Debtors shall provide, at no cost to the interested party only, a complete copy of the file for the particular Reclamation Demand;

h. Debtors agree to waive all defenses based the sale or commingling of goods, to the extent that such a defense is based on a sale or commingling of goods which occurred on or after the date of the Demand Date, or any other defense arising due to the passage of time or the delay resulting from the procedures adopted herein.

i. the Debtors will file a motion, on notice to parties in interest, stating its position concerning the validity or invalidity of those reclamation claims listed in the Report, if any, that they deem to be valid pursuant to the Order requested herein;

j. absent further order of the Court, such motion shall be brought by the Debtors within 90 days of the Court's entry of an order approving the Motion;

k. if the Debtors fail to bring such a motion within the required period of time, any holder of a reclamation claim may bring such a motion on its own behalf but may not bring such a motion earlier than 90 days after entry of this Order;

l. all parties in interest shall have the right and opportunity to object to the inclusion or omission of any asserted reclamation claim as well as the proposed treatment of any reclamation claim in connection with such motion, and can raise any other objections that may exist on behalf of that creditor. If a Claimant files an objection the parties are free to conduct any discovery to resolve such objection; and

m. all reclamation claims allowed by the Court pursuant to the above described motion will be treated in accordance with 11 U.S.C. §546(c);³ and it is further

ORDERED that the Debtors are hereby authorized, but not directed, to refuse all demands for actual reclamation and return of goods; and it is further

ORDERED that any right of reclamation for all such claims is hereby denied under the terms set forth in the Motion, effective as of the Petition Date; and it is further

³ The Debtors reserve the right to object to any reclamation claim on any grounds, including the ground that reclamation claims are subject to any secured creditor's liens and that the debt secured by such liens exceeds the value of the goods subject to the reclamation claim, provided, however, the Debtors' objections shall be limited to those existing as of the date of each particular reclamation demand.

ORDERED that the Debtors, in their discretion and upon consent of the administrative agent for the Pre-Petition Lenders and otherwise in accord with the agreements for use of cash collateral submitted to the Court, may make goods available for pick-up by any reclaiming seller (a) who timely demands in writing reclamation of goods pursuant to section 546(c) of the Bankruptcy Code, (b) whose goods the Debtors have accepted for delivery, and (c) who properly identifies the goods to be reclaimed; and it is further

ORDERED that reclamation claimants and others are prohibited from seeking to reclaim or interfering with the delivery of goods to or by the Debtors; and it is further

ORDERED that in accordance with section 362 of the Bankruptcy Code, vendors and all other third parties are not permitted to, and are hereby prohibited from, interfering in any way with the postpetition shipment or delivery of goods to or by the Debtors; and it is further

ORDERED that nothing contained herein or in the Motion shall limit the Debtors' ability to make payments to creditors in accordance with any other orders of this Court; and it is further

ORDERED that nothing contained herein or in the Motion shall constitute a finding, or be deemed or interpreted as an admission of any kind, that the Debtors have been, or are currently, insolvent; and it is further

ORDERED that, except as provided herein, this Order shall be without prejudice to the substantive rights of any party making a reclamation demand

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order; and it is further

ORDERED that notwithstanding the possible applicability of Fed. R. Bankr. P. 6004(g), 7062, 9014, or otherwise, the terms and conditions of this order shall be immediately effective and enforceable upon its entry.

Dated: _____, 2003

The Honorable Mary F. Walrath
United States Bankruptcy Judge