

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.)	
)	Related Docket No. 296
)	<u>Hearing Date:</u> May 6, 2003 at 12:30 p.m. prevailing Eastern Time

OBJECTION OF LENDERS TO DEBTORS' MOTION FOR ORDER APPROVING EXTENSION OF UNSECURED CREDIT BY REFRIGERATED TRANSPORT EXPRESS, L.P. AND RELEASE OF AVOIDANCE ACTIONS

Deutsche Bank Trust Company Americas, in its capacity as Administrative Agent and JPMorgan Chase Bank, in its capacity as Collateral Agent, Provider of Treasury Services and Syndication Agent (together, the “Agents”) on behalf of themselves and on behalf of those certain prepetition and postpetition secured lenders (collectively, the “Lenders”) of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this Objection to the Debtors’ Motion for Order Approving Extension of Unsecured Credit by Refrigerated Transport Express, L.P. (“RTX”) and Release of Avoidance Actions (the “Motion”) and respectfully represent as follows:

1. The Motion seeks extraordinary relief for which the Debtors have failed to provide adequate justification. The Debtors have already provided significant benefit to RTX.

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.

Pursuant to this Court's Order Authorizing Debtors to Pay Prepetition Claims Relating to Shipping and Warehousing Charges in the Ordinary Course of Business entered April 3, 2003 (the "Critical Shippers Order"), the Debtors have paid approximately \$614,200 to RTX and propose to pay an additional amount of approximately \$138,200 on account of RTX's prepetition claims. See Debtors' Motion ¶ 8. The Debtors advanced substantially the same arguments in their Critical Shippers Motion (as defined below) as are currently being asserted in support of the present Motion. See Debtors' Motion for Order Authorizing Debtors to Pay Prepetition Claims Related to Shipping and Warehousing Charges in the Ordinary Course of Business, dated April 2, 2003 (the "Critical Shippers Motion") ¶¶ 5 and 6. Pursuant to the Critical Shippers Motion, the Debtors sought to prevent "breakdown of their shipping network" and to "maintain a reliable, efficient and smooth distribution system" and to further "induce shippers to continue to carry goods and make timely delivery." See Debtors' Critical Shippers Motion ¶ 7.

2. The Debtors now propose, in addition to providing the above-referenced payments pursuant to the Critical Shippers Order, to release RTX from preference actions which may total approximately \$12 million dollars based upon payments made prepetition. See Debtors' Motion ¶ 10. It is well established that a fundamental purpose of the Bankruptcy Code is equality of distribution among a debtor's creditors. The Debtors' must provide further justification beyond the bare assertions contained in their pleadings for granting RTX such additional extraordinary treatment. The Debtors acknowledge that they "have not yet analyzed whether any payments made to any creditors may be avoidable as preferential transfers or by reason of other avoidance powers under the Bankruptcy Code" and merely rely on the assertion of RTX that "all payments it received during the 90 days preceding the preference period were made in the ordinary course." Id.

3. In sum, the Debtors' Motion should be denied as they have failed to provide a rational business justification for the relief requested therein based upon an analysis of the relevant facts.

WHEREFORE, the Agents respectfully request that this Court enter an order denying the Debtors' Motion and granting such other and further relief as may be just.

Dated: April 29, 2003

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