

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
FLEMING COMPANIES, INC., et al.,) Case No. 03-10945 (MFW)
) (Jointly Administered)
Debtors.)
) Hearing: May 19, 2003 at 12:30 p.m.
) Objection Date: May 12, 2003

Objection of Dallas County, City of El Paso, Grayson County, Harris County, City of Houston, Houston ISD, McLennan County, Rockwall CAD, Rockwall County and Tarrant County to Debtors’ Motion for Order (I) Establishing Procedures for the Sale of Real Estate and Personal Property Located Therein and (ii) Authorizing the Sale of Real Estate and Personal Property Located Therein Pursuant to Sections 396(b), 363(f) and 1146(c) of the Bankruptcy Code

Now come Dallas County, City of El Paso, Grayson County, Harris County, City of Houston, Houston ISD, McLennan County, Rockwall CAD, Rockwall County, and Tarrant County (jointly the “Texas Tax Authorities” or “Tax Authorities”) and object to the relief sought by the Debtors’ in their Motion for Order (I) Establishing Procedures for the Sale of Real Estate and Personal Property Located Therein and (ii) Authorizing the Sale of Real Estate and Personal Property Located Therein Pursuant to Sections 396(b), 363(f) and 1146(c) of the Bankruptcy Code. In support of their objection, the Texas Tax Authorities would show the Court as follows:

1. The Texas Tax Authorities are holders of secured claims for unpaid ad valorem taxes for the 2002 and 2003 tax years. These taxes are secured by priority perfected liens on the real and personal property of the Debtors’ estates pursuant to Tex. Prop. Tax Code §§ 32.01 and 32.05. In re: Winn’s Stores, Inc., 177 B.R. 253 (Bankr. W.D. Tex. 1995) (Texas tax liens are non-avoidable in bankruptcy); Central Appraisal District of Taylor County v. Dixie-Rose Jewels, Inc., 894 S.W. 2d 841 (Tex. App. - Eastland 1995) (Texas tax liens are senior to liens of any

consensual lender). These liens are *in solido* and attach on January 1 of each year to all personal property of the property owner, and to property subsequently acquired. In re: Universal Seismic Associates, Inc., 288 F.3d 205 (5th Cir. 2002); City of Dallas v. Cornerstone Bank, N.A., 879 S.W. 2d 264 (Tex. App. - Dallas 1994). The Texas Tax Authorities' claims total in excess of \$1,600,000.¹

2. The relief requested by the Debtors fails to set forth any provisions which adequately protect the liens and claims of the Texas Tax Authorities as required by 11 U.S.C. § 363(e). Unless the 2002 taxes are paid at the time of sale and an escrow is made from the sale proceeds to which the Tax Authorities' liens with respect to any unpaid tax liens may attach, the Tax Authorities will not be adequately protected. These escrowed proceeds should not be available for the Debtors to use absent agreement of the Tax Authorities. Further, to the extent any property is sold for which the purchaser is assuming any liability with respect to the current 2003 tax year, that property must be sold subject to the tax liens until the taxes are satisfied by either the Debtors or purchaser. Finally, upon resolution of any outstanding issues regarding the Tax Authorities' claims, the Debtors should be authorized to pay them out of the sale proceeds or the escrow account without further authorization from the Court

WHEREFORE, based upon the foregoing, the Texas Tax Authorities request the Court to enter an order denying the relief sought by the Debtors, or, alternatively, requiring the Debtors to pay the secured claims of the Texas Tax Authorities at the time of sale from the sale proceeds and for such other and further relief to which the Court may find they are entitled.

¹The Texas Tax Authorities claims actually may be substantially higher because they are still working to locate all property owned by the Debtors.

Respectfully submitted,

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-and-

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Dated: May 12, 2003