

**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: May 13, 2003 at 4:00 p.m. EST
Hearing Date: May 19, 2003 at 12:30 p.m. EST**

**SANNDREL OF PENNSYLVANIA INC.'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 (SUBLEASED LOCATIONS)
[Relates to Docket No. 644, 283, 13]**

Sanndrel of Pennsylvania Inc., 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 (Subleased Locations) (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. Sanndrel of Pennsylvania Inc. is the landlord of nonresidential real property leased by Debtors located at 3437 Simpson Ferry Road, Camp Hill, Pennsylvania. On April 2, 2003, a mere day after the filing of the original bankruptcy petition, Debtors filed this Motion seeking to reject Sanndrel of Pennsylvania Inc.'s lease of nonresidential real property located at 3437 Simpson Ferry Road, Camp Hill, Pennsylvania *nunc pro tunc* to the filing of the bankruptcy.

Lease at issue. Until such a motion is filed and an order is entered, Debtors should not be permitted to reject this lease.

4. In Debtors' Motion, they assert that they are seeking to reject the Lease effective as of the date on which this Court enters an order approving the Motion; however, in the draft Order attached to the Motion at Paragraph 2, the Order seeks rejection as of the Petition date.

5. 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."

6. 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).

7. 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).

8. 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.

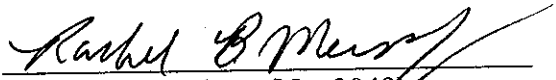
9. In connection with the nonresidential real lease at 3437 Simpson Ferry Road, Camp Hill, Pennsylvania the Debtors have subleased a portion of the premises and, upon information and belief, the Debtors have not sought this Court's approval for the termination of the sublease. Debtors cannot be allowed to reject the lease unless and until they effectively reject the sublease and they must be required to pay administrative rent until after this is accomplished.

10. Since the Debtors have not relinquished control of the property, and the Landlord is unable to pursue state law summary possession proceedings until after the sublease between the Debtors and third-parties has been rejected and Debtors have rejected the Lease at issue, no order should be entered allowing a rejection of this Lease prior to the completion of the rejection of the sublease as well as the Lease between Landlord and Debtors.

WHEREFORE, Sanndrel of Pennsylvania Inc. requests that this Honorable Court deny Debtors Motion to the extent that it seeks a rejection date prior to the rejection and termination of the Sublease of the property and return of control of the property to Sanndrel of Pennsylvania, Inc.

DATED: May 12, 2003

MONZACK AND MONACO, P.A.


Rachel B. Mersky (No. 2049)
1201 No. Orange Street, Suite 400
Wilmington, DE 19801
Telephone: (302) 656-8162
Telecopier: (302) 656-2769
Counsel for Sanndrel of Pennsylvania Inc.