IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

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

APPLICATION FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. §§ 327(A), 328(A) AND FED.R.BANKR.P. 2014(A) AUTHORIZING THE EMPLOYMENT AND RETENTION OF THE FOOD PARTNERS AS RETAIL GROCERY FINANCIAL ADVISOR TO THE DEBTORS AND DEBTORS IN POSSESSION

The above-captioned debtors and debtors in possession (the "Debtors") file this application (the "Application") seeking entry of an order pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the "Bankruptcy Code") and Fed.R.Bankr.P. 2014(a) authorizing the Debtors' retention and employment of The Food Partners, LLC ("TFP") as retail grocery financial and strategic advisor. In support of this Application, the Debtors respectfully state as follows:

JURISDICTION

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C.

[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.

§ 157(b)(2). Venue of this proceeding and this Application is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief sought herein are sections 327(a) and 328(a) of the Bankruptcy Code and Fed.R.Bankr.P 2014(a).

BACKGROUND

3. On April 1, 2003, (the "Petition Date"), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors are operating their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case. An official committee of unsecured creditors (the "Committee") was appointed on April 10, 2003.

RELIEF REQUESTED

4. By this Application, the Debtors seek to employ and retain TFP as their financial and strategic advisor to provide financial and strategic advisory services pursuant to the terms of the agreement (the "TFP Agreement" attached as Exhibit A to the affidavit of Matthew S. Morris (the "Affidavit") filed concurrently herewith), which was entered into by TFP and the Debtors. TFP has rendered services to the Debtors since September, 2002 in connection with the Debtors' divesture efforts. TFP has become familiar with the Debtors' operations and is well qualified to represent the Debtors as retail grocery financial and strategic advisors in connection with such matters in a cost-effective and efficient manner.

A. Services to be Provided

5. TFP will provide such financial and strategic advisory services as TFP and the Debtors shall deem appropriate and feasible in order to advise the Debtors in the course of the Chapter 11 Cases, in connection with possible sales (each, a "Transaction")

to one or more third parties (the "Buyer(s)") of the Debtors' price-impact retail grocery stores (the "Store Assets") including, but not limited to, the following:[2]

a. Advise and assist the Debtors in developing strategy for accomplishing the Transactions;

b. Advise the Debtors in the development of a list of prospective Buyers after considering the qualitative characteristics of these parties and evaluating each party against the strategic and financial objectives of the Debtors. TFP will assess the Debtors' strategies for approaching each prospective Buyer. No party will be contacted by TFP without the Debtors' prior approval and without TFP causing such third-party to execute a Confidentiality Agreement;

c. Prepare, with the Debtors' approval, confidential descriptive memoranda for distribution to prospective Buyers selected by the Debtors, describing select information pertaining to the Store Assets;

d. Facilitate and respond to questions raised by prospective Buyers (in consultation with the Debtors, as appropriate);

e. Coordinate among the various entities and divisions of the Debtors, distribution centers and other personnel;

f. Assist the Debtors in negotiating and executing all agreements with prospective Buyers;

g. Advise the Debtors and act as the Debtors' representative in the course of negotiating the Transaction(s) with prospective Buyers; and

h. Assist the Debtors in closing the Transaction(s).

6. TFP's engagement will run from the date of the TFP Agreement, May 9, 2003, until December 31, 2003. Notwithstanding the foregoing, the TFP engagement

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the TFP Agreement.

may be terminated by either party at any time, with or without cause, upon written notice to that effect to the other party.

7. The financial and strategic advisory services set forth in the TFP Agreement and summarized above do not encompass other investment banking services or transactions that may be undertaken by TFP at the request of the Debtors. The terms and conditions of any such investment banking services, including compensation arrangements, would be set forth in a separate written agreement between the Debtors and TFP and would be subject to any necessary Court approval.

8. The financial and strategic advisory services that TFP will provide to the Debtors are necessary to enable the Debtors to maximize the value of the estates and to reorganize successfully. The Debtors believes that the financial and strategic advisory services will not duplicate the services that, subject to this Court entering or having entered appropriate orders, other financial and strategic advisors, if any, would provide to the Debtors in the Chapter 11 Cases. TFP will carry out unique functions and will use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid the unnecessary duplication of services.

9. TFP is an investment banking firm with expertise in the food industry. Specifically, TFP services parties in various segments of the food chain, providing companies similar to the Debtors with merger, acquisition and divestiture services, private placements of debt and equity capital, financial restructuring, strategic advisory and loan portfolio services. Accordingly, TFP is keenly aware of the Debtors' industry and will be critical in assisting the Debtors with their retail grocery divestiture efforts during these Chapter 11 Cases.

B. Terms of Retention

10. TFP has agreed to represent the Debtors for compensation at the amounts agreed upon between TFP and the Debtors pursuant to the TFP Agreement. As more

fully described in the TFP Agreement, in consideration of the financial and strategic advisory services provided by TFP, the Debtors have agreed to pay TFP as follows (the "Fee Structure"):

a. Success Fee. In the event a Transaction occurs and TFP has provided Services in connection with such Transaction during the term of the TFP Agreement, the Debtors will or will cause the Buyer(s) to pay to TFP a success fee (the "Success Fee") calculated as one percent (1.0%) of the total amount of consideration paid to the Debtors by the Buyer(s) for the divested Store Assets (including, but limited to, all monies received by the Debtors for the current fixed assets, inventory and any liabilities assumed by Buyer(s)). Any Success Fee owed under this paragraph shall be paid to TFP in readily available funds on the day the closing of any Transaction occurs. Parties acknowledge that the Transaction will be effected through multiple separate closings with different third party buyers and that the applicable Success Fee will be paid for each respective closing at such closing; and

b. Reimbursement of Expenses. In addition to any Success Fee that may be payable to TFP and regardless of whether any Transaction is consummated, the Debtors will reimburse TFP on a monthly basis for all reasonable documented expenses incurred in connection with the Transaction(s) or otherwise arising out of TFP's engagement pursuant to the TFP Agreement, including all travel, production costs and database research. The Debtors will remain liable for reimbursement of reasonable expenses incurred by TFP prior to termination or expiration of the TFP Agreement in the course of providing the Services even after termination or expiration of the TFP Agreement.

11. TFP will maintain detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services.

12. TFP will seek compensation and reimbursement of expenses, as specified in the TFP Agreement, with the payment of such fees and expenses to be approved in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and any orders of this Court; provided that the approval of TFP's

fees and expenses in these Chapter 11 Cases will be subject to the standards contained in section 328(a) of the Bankruptcy Code.

13. The Debtors seek approval of the Fee Structure pursuant to section 328(a) of the Bankruptcy Code, which provides, in relevant part, that a debtor "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Accordingly, section 328(a) of the Bankruptcy Code permits the Court to approve the Fee Structure outlined herein. The Fee Structure appropriately reflects the nature and scope of the services to be provided by TFP, TFP's substantial experience with respect to financial and strategic advisory services, and the fee structures typically utilized by TFP and other leading financial and strategic advisors, which do not bill their clients on an hourly basis.

14. Notwithstanding the approval of the Fee Structure requested herein, all of TFP's fees and expenses in these Chapter 11 Cases will be subject to approval of the Court upon proper application by TFP in accordance with sections 330 and 331 of the Bankruptcy Code, Fed. R. Bankr. P. 2016, the fee and expense guidelines established by the United States Trustee and any other applicable requirements or orders of the Court. However, pursuant to section 328(a) of the Bankruptcy Code, the Court may not subsequently allow TFP's compensation on terms different from the approved Fee Structure unless such compensation "prove[s] to have been improvident in light of developments not capable of being anticipated at the time" the Fee Structure was originally approved. 11 U.S.C. § 328(a).

15. Since the Petition Date, TFP has received no compensation for services performed.

C. TFP's Disinterestedness

16. TFP has reviewed its files for any connection it may have to the entities listed on Exhibit B of the Affidavit. To the best of the Debtors' knowledge and except as disclosed in the Affidavit, TFP is disinterested and does not hold or represent any interest adverse to the Debtors' estates.

17. The entities listed on Exhibit B have been reviewed by TFP using its reasonable efforts and with assistance from the Debtors and Debtors' counsel. TFP will periodically review its files during the pendency of the Chapter 11 Cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, TFP will use reasonable efforts to identify such further developments and will promptly file a Supplemental Affidavit as Rule 2014(a) of the Federal Rules of Bankruptcy Procedure requires.

D. Indemnification Provisions

18. TFP requests that the indemnification provisions of the TFP Agreement be approved, as follows:

> a. In the event of a claim by a third party relating to the Services under the TFP Agreement to which these Standard Terms and Conditions to the TFP Agreement are attached, the Debtors will indemnify TFP and its personnel from all such claims, liabilities, reasonable costs and expenses, except to the extent determined to have resulted from the intentional or deliberate or willful misconduct or gross negligence of TFP. In no event shall the Debtors be liabil~~ity~~e for consequential, special, punitive or exemplary damages, costs, expenses or losses (including, without limitation, lost profits and opportunity costs). The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract, statute, tort (including, without limitation, negligence) or otherwise;
>
> b. In no event shall TFP be liable for consequential, special, punitive or exemplary damages, costs, expenses or losses (including, without limitation, lost profits and opportunity costs). The provisions of this paragraph shall apply regardless of the form of action, damage, claim, tort (including without limitation, negligence) or otherwise; and
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> c. In the event any third party asserts a claim against TFP or its personnel for which a right of indemnification is asserted under subparagraph (a) above, TFP agrees to promptly notify Debtors in writing and Debtors shall, at its choice, either engage counsel to defend TFP and/or its personnel or shall be responsible for the current payment of costs and expenses TFP and/or its personnel incur to defend against such claim.

19. The preceding indemnification provisions in the TFP Agreement are in substantially the same form as the indemnification procedures that were negotiated with the United States Trustee and approved by the Court in In re United Artists Theatre Company, et al., Case No. 00-03514 (SLR) (Bankr. D.Del. Sept. 7, 2000); In re Ameriserve Food Distribution, Inc., Case No. 00-0358 (PJW) (Bankr. D. Del. May 9, 2000); and In re Planet Hollywood International, Inc., Case No. 99-3612 (JJF) (Bankr. D. Del. Dec. 17, 1999).

NOTICE

20. Notice of this Application has been given to: (a) the United States Trustee; (b) counsel to the senior secured lenders; (c) the Committee and (d) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure will be sufficient for entry of an Order on the Application. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

21. No prior application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, authorizing the Debtors to employ and retain TFP as financial and strategic service advisors *nunc pro tunc*, to May 9, 2003 and granting such further relief as is just and proper.

Wilmington, Delaware

Dated: May 16, 2003

Respectfully submitted,

FLEMING COMPANIES, INC.

KIRKLAND & ELLIS
James H. M. Sprayregen, P.C. (ARDC No. 6190206)
Richard L. Wynne (CA Bar No. 120349)
Geoffrey A. Richards (ARDC No. IL 6230120)
Shirley Cho (CA Bar No. 192616)
Marjon Ghasemi (CA Bar No. 211551)
Kirkland& Ellis
777 South Figueroa Street
Los Angeles, CA 90017
(213) 680-8400 (Telephone)
(213) 680-8500 (Facsimile)

and

PACHULSKI, STANG, ZIEHL, YOUNG, JONES & WEINTRAUB LLP

Laura Davis Jones (DE No. 2436)
Ira D. Kharasch (CA No. 109084)
Scotta E. McFarland (DE No. 4184)
Christopher J. Lhulier (DE No. 3850)
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier No. 19801)
(302) 652-4100 (Telephone)
(302) 652-4400 (Facsimile)

Counsel for the Debtors and Debtors in Possession