

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re	§	Chapter 11
	§	
Fleming Companies, Inc., et al.,	§	Case No. 03-10945
	§	Jointly Administered
	§	
Debtors.	§	Objection Deadline: May 28, 2003
	§	Hearing Date: June 4, 2003
	§	Time: 4:00 p.m. (Eastern Time)
	§	

**CYPRESS/FC LAS CRUCES' OBJECTION TO DEBTORS' MOTION
FOR AN ORDER PURSUANT TO SECTION 365 OF THE
BANKRUPTCY CODE AUTHORIZING, BUT NOT DIRECTING, DEBTORS
TO ASSUME AND ASSIGN OR, ALTERNATIVELY, REJECT CERTAIN
UNEXPIRED NON-RESIDENTIAL REAL-PROPERTY LEASES (Docket No. 944)**

Cypress/FC Las Cruces I, L.P. ("Cypress") files this its Objection to Debtors' Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Authorizing, but not Directing, Debtors to Assume and Assign Or, Alternatively, Reject Certain Unexpired Non-Residential Real-Property Leases (the "Motion") and would respectfully show the Court as follows:

1. Cypress is one of the Landlords listed on **Exhibit "1"** to the Motion. Pursuant to the Motion, the Debtors propose to assume and assign the Debtors' lease with Cypress to Supermarket Enterprises, L.P. (dba Blue Sage Markets).

2. Cypress objects to the Debtors' Motion because it is defective. Specifically, the Motion does not purport to represent nor contain any information from which Cypress could believe that Cypress can be provided adequate assurance of future performance under the Lease. There is simply no information, in the Motion, about the entity "Supermarket Enterprises, L.P. (dba Blue Sage Markets)" other than an address in the Motion. *See* 11 U.S.C. § 365(f)(2)(B).

3. It is the Debtors burden to correctly plead for relief. In the instant case, the Debtors do not even represent to the Court that the Debtors can satisfy the requirements of 11 U.S.C. § 365(f)(2)(B), much less explain to Cypress how the Debtors or their assignee would propose to provide adequate assurance of future performance.

4. The requirement of adequate assurance of future performance is not mere window dressing, particularly in light of the Debtors' request for relief pursuant to 11 U.S.C. § 365(k) from future liability under the lease. *See Colliers on Bankruptcy*, ¶ 365.08.

5. Moreover, in the instant case, the financial condition of the proposed assignee is critical to preserving the benefit of the bargain that Cypress obtained when it leased the property to the Debtors. Specifically, at the time Cypress entered into the lease, the Debtors were a publically traded company with a stock price of approximately \$20.00 a share and "BB" rated credit, thus making the lease and the underlying property marketable to certain investors and allowing Cypress the potential to realize a predictable return on its investment. *See, e.g., In re C&S Grain Co.*, 47 F.3d 233 (7th Cir. 1995) (adequate assurance seeks to assure the non-debtor party the benefit of its bargain).

6. In that the Debtors do not even purport to claim it can show that the proposed assignee can provide any assurance, much less adequate assurance, of future performance, the Motion should be denied as to the proposed assumption and assignment of the Debtors' lease with Cypress.

WHEREFORE, Cypress requests that the Motion be denied as to the proposed assumption and assignment of its lease and for such further relief as Cypress may justly show itself entitled.

Dated: May 28, 2003
Wilmington, DE

Respectfully Submitted,

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