

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.)	

**DEBTORS' APPLICATION FOR THE ENTRY OF AN ORDER AUTHORIZING THE
EMPLOYMENT AND RETENTION OF WCM INVESTMENT COMPANY
AS REAL ESTATE BROKER WITH RESPECT TO CERTAIN LOCATIONS**

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) (i) authorizing the Debtors' retention and employment of WCM Investment Company ("WCM") as the Debtors' real estate broker with respect to certain of the Debtors' retail and non-retail fee-owned properties as set forth in the engagement letter, dated June 2, 2003, by and between the Debtors and WCM (the "Engagement Letter"), a true and correct copy of which is attached as Exhibit 1 to the Affidavit of William C. Mee (the "Mee Affidavit") in support of this

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.; Favara 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.

Application, which is being filed concurrently herewith. In support of this Application, the Debtors respectfully represent 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. § 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 these cases. An official committee of unsecured creditors (the "Committee") was appointed on April 14, 2003.

Relief Requested

4. By this Application, the Debtors seek to employ and retain WCM as their real estate broker with respect to certain of the Debtors' retail and non-retail fee-owned properties as identified in Schedule A and Schedule B (collectively the "Properties") of the Engagement Letter and on the terms and conditions identified therein.

The Scope of WCM's Services

5. The professional services that WCM will render to the Debtors are described in the Engagement Letter. WCM has stated its willingness to serve in these Chapter 11 Cases and render the necessary professional services as real estate broker to the Debtors in connection with certain retail and non-retail fee-owned properties identified in Schedule A and Schedule B of the Engagement Letter. The Debtors believe that WCM is well qualified to represent their Debtors' interests given WCM's experience as a commercial real estate consultant and real estate and business broker and its years of experience representing the Debtors.

6. More specifically, the Engagement Letter provides that WCM shall provide the following services:

- a. Assist in establishing strategies, tactics, goals and parameters with respect to the Properties;
- b. Attend and participate in Court hearings, Committee meetings, and meetings with the Debtors and Debtors' counsel when requested to do so by the Debtors; and
- c. Use best efforts to market surplus or unwanted Properties and perform customary brokerage services in connection with the Properties. Specifically, WCM will develop and design a marketing program for the sale and/or assignment of Properties. WCM will implement a marketing plan, which will include, but not be limited to, soliciting offers from prospective purchasers and shall make recommendations to the Debtors as to the advisability of accepting particular offers or settlements.

7. During the term of engagement, the Debtors shall have and retain the complete discretion and authority to accept or reject any offer presented by WCM and to add or withdraw any Property from the negotiation effort, subject to the Survival paragraph in Article III of the Engagement Letter.

WCM's Disinterestedness

8. To the best of WCM's knowledge, and except as disclosed herein or in the Mee Affidavit, WCM has not otherwise been retained, and will not be retained, by any of the Debtors' creditors, equity security holders or any other party-in-interest, or their respective attorneys, in any matters relating to any of the Debtors or their estates.

9. To the best of the WCM's knowledge, and except as otherwise disclosed herein or in the Mee Affidavit: (a) WCM does not represent or hold any interest adverse to any of the Debtors or their estates as to the matters for which WCM is to be retained, (b) neither WCM nor its professionals have any connection with any of the Debtors, their creditors or any other party in interest, and (c) WCM's employment is necessary and in the best interest of the Debtors.

Compensation to WCM

10. WCM has agreed to represent the Debtors for compensation at the amounts agreed upon between WCM and the Debtors pursuant to the Engagement Letter. As more fully described in the Engagement Letter, in consideration for the real estate broker services provided by WCM, the Debtors have agreed to pay WCM as follows:

a. Upon the closing of any sale transaction for a Property listed on Schedule A of the Engagement Letter, WCM shall be paid a commission equal to four percent (4%) of the gross purchase price. To the extent other real estate brokers are engaged by WCM or identified by any buyer in a purchase agreement for a fee owned Property listed on Schedule A (“Participating Brokers”), upon receiving payment of its commission, WCM shall be responsible for the payment of any other fees or commissions to such Participating Brokers.

b. The Properties listed on Schedule B of the Engagement Letter have been and continue to be marketed by WCM. In the event WCM is the procuring cause for the sale of any of the Properties listed on Schedule B or other fee-owned Property of Debtors, WCM shall be paid a commission equal to four percent (4%) of the gross purchase price upon the closing of such transaction.

11. WCM will maintain detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services. WCM will seek compensation and reimbursement of expenses, as specified in the Engagement Letter, 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 WCM’s fees and expenses in these Chapter 11 Cases will be subject to the standards contained in section 328(a) of the Bankruptcy Code.

No Prior Request

12. No previous request for the relief sought in this Motion has been made to this or any other Court.

Notice

13. Notice of this Application has been given to: (a) the United States Trustee; (b) counsel to the senior secured lenders; (c) proposed counsel to 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

14. 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 WCM Investment Company as real estate broker and granting such further relief as is just and proper.

Dated: June 10, 2003

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