

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)
	)	
	)	Jointly Administered
	)	
Debtors.	)	<b>Obj. Deadline: June 20, 2003 at 4:00 p.m.</b>
	)	<b>Hearing Date: June 25, 2003 at 2:00 p.m.</b>

**OBJECTION OF INLAND SOUTHERN MANAGEMENT CORPORATION TO THE MOTION OF THE DEBTORS FOR ORDER PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE AUTHORIZING AND APPROVING PROCEDURES FOR (I) THE ASSUMPTION AND ASSIGNMENT AND (II) REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY OF THE DEBTORS [DOCKET NO. 1383]**

Inland Southern Management Corporation (“Inland”), as managing agent for Inland Southeast Rowlett, L.L.C. (“Inland Rowlett”) and Inland Southeast Garland, L.L.C. (“Inland Garland”), by and through its undersigned counsel, hereby objects to the above-captioned debtors’ (the “Debtors”) Motion for Order Authorizing and Approving Procedures for (i) the Assumption and Assignment and (ii) Rejection of Executory Contracts and Unexpired Leases of Nonresidential Real Property of the Debtors [Docket No. 1383] (the “Motion”). In support of its objection, Inland states as follows:

**Background**

1. On or about April 1, 2003 (the “Petition Date”), the Debtors filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Upon information and belief, the Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, a predecessor of Inland Garland, as landlord, entered into a lease with the Debtors, as tenant, pursuant to which the Debtors leased certain non-residential real property located at 3265 Broadway, Garland, Texas, and at which the Debtors operate their store no. 385 (the “Garland Lease”). Currently, Inland Garland is the landlord under the Garland Lease. In addition, prior to the Petition Date, a predecessor of Inland Rowlett, as landlord, entered a lease with the Debtors, as tenant, pursuant to which the Debtors leased certain non-residential real property located at 8800 Lakeview Parkway, Rowlett, Texas, and at which the Debtors operate their store no. 386 (the “Rowlett Lease”). Currently, Inland Rowlett is the landlord under the Rowlett Lease. As set forth above, Inland manages the Garland Lease and the Rowlett Lease (collectively, the “Leases”) for Inland Garland and Inland Rowlett, respectively. To date, the Debtors have not indicated whether they intend to assume or reject the Leases.

3. On or about June 9, 2003, the Debtors filed the Motion. Pursuant to the Motion, the Debtors are seeking the Court’s approval of certain procedures that they propose to follow for assuming and assigning and rejecting executory contracts and unexpired leases (the “Procedures”). The proposed Procedures permit the Debtors to serve a notice (the “Notice”), in lieu of a separate motion to assume and assign or to reject any executory contract, lease or sublease, or interest in such lease or sublease (collectively, the “Contracts”) upon: (i) the Contract counterparty, (ii) other interested parties to the Contract (including, the proposed assignee, and in the case of a lease which is the subject of a sublease, the subtenants), (iii) counsel to the creditors’ committee, (iv) counsel to the Agent to the Senior Secured Lenders, and (v) the office of The United States Trustee (collectively, the “Parties”).

4. The proposed Procedures state that the Debtors will include certain information in their Notices to reject Contracts, and other information in their Notices to assume and assign Contracts. Interested parties have only 10 calendar days from the date the Notice is served to file a written objection to the assumption and assignment or the rejection of the Contracts. If the objection is not received by the Debtors before the expiration of the 10 day time period, the Procedures propose that the Debtors may then file a certificate of no objection and an order with the Court authorizing the Debtors to assume and assign or to reject the Contracts.

#### **Objections to the Motion**

5. Inland objects to the Motion on the grounds that (i) all parties that have filed a notice of appearance in the Debtors' cases should be served with copies of the Notices, or at a minimum, Inland and its counsel should be served with any Notices that relate to the Leases, and (ii) any Notices regarding assumption and assignment of Contracts should be required to include information regarding adequate assurance of the proposed assignee's future performance under the Contracts, as required by section 365 of the Bankruptcy Code

6. With respect to service of the Notice, as stated above, under the Procedures, parties have only 10 calendar days from when the Notice is sent to file an objection thereto. If the Notice is sent to the wrong person or if it is sent to the correct person, who happens to be sick or on vacation, the time within which to object to the Notice could easily expire before parties can ascertain what is occurring. In general, parties file notices of appearance for a reason; to ensure that they become aware of anything that might affect their interests. It would not be unreasonable to require the Debtors to serve the Notices on those parties that have filed notices of appearance in the Debtors' cases, and, in fact, could only increase the chances that the proper

parties receive actual notice of the Debtors' intent, before the objection deadline expires. At a minimum, the Debtors should be required to serve any Notice regarding the Leases upon Inland and its undersigned counsel.

7. With respect to the information that the Procedures propose to include in the Debtors' Notices regarding assumption/assignment, although the Debtors are required to provide relevant information concerning the terms and obligations of the assumed/assigned leases and the payment of cure amounts, the proposed Procedures are noticeably devoid of any requirement that the Debtors provide landlords with adequate assurance of an assignee's future performance under the leases being assumed and assigned, as required by sections 365(b)(1)(c), 365(b)(3) and 365(f)(2)(B) of the Bankruptcy Code. Unless the Debtors are required to provide in the Notice information concerning adequate assurance of the assignee's ability to perform their future obligations under the leases, landlords will be forced to automatically object to any and all Notices regarding the assumption and assignment of their leases.

8. To summarize, if the Procedures are going to be approved by the Court, they should be modified so that the Debtors are required to (a) serve all Notices on those parties that have filed notices of appearance in the Debtors' cases, and (b) include in each Notice regarding assumption/assignment the relevant financial information concerning the proposed assignee's adequate assurance of future performance.<sup>1</sup>

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<sup>1</sup> Such relevant information should include the following, at a minimum: full legal name of the proposed assignee, financial statements and supplemental schedules of the assignee for the past two years, any and all documents regarding the potential assignee's experience and the potential assignee's principals' experience in operating the proposed business, the number of facilities the potential assignee operates, a statement setting forth the potential assignee's intended use of the demised premises under the lease, the potential assignee's business plan for the next few years, including sales and cash flow projections, any pro-forma financial projections prepared in contemplation of the purchase of the lease and operation of the facilities at the premises, any information relating to the proposed assignee's ability to fund the purchase of the lease and operation of the facilities, and any additional information that the proposed assignee intends to use to demonstrate adequate assurance of future performance.

WHEREFORE, for all of the foregoing reasons, Inland respectfully requests that the Court enter an order that denies the relief requested in the Motion in its current form, unless it is modified as proposed herein, and that grants such other and further relief as is just and proper.

Dated: June 20, 2003  
Wilmington, Delaware

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