

**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.)

Proposed Objection Deadline: July 15, 2003 at 12:00 p.m. prevailing Eastern time
Proposed Hearing Date: July 17, 2003 at 3:00 p.m. prevailing Eastern time

**DEBTORS' MOTION FOR AN ORDER APPROVING STIPULATION TERMINATING
THE UNEXPIRED REAL PROPERTY LEASE OF THE RAINBOW RETAIL
GROCERY STORE LOCATED AT PLYMOUTH STATION SHOPPING CENTER,
PLYMOUTH, MINNESOTA (STORE 73, LEASE NO. MN-274)**

Fleming Companies, Inc. ("Fleming") and Rainbow Food Group, Inc.

("Rainbow"), two of the above-captioned debtors and debtors in possession ("Debtors"), hereby move (the "Motion") this Court for an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") to approve the Stipulation Regarding Unexpired Real Property Lease of Store at Plymouth Station Shopping Center, Plymouth, Minnesota (Store 73, Lease No. MN-274), dated June 30, 2003 (the "Stipulation"), between Debtors Fleming and Rainbow, and landlord Hans Hagen Homes, Inc. (the "Landlord"). In support of the Motion, Fleming and Rainbow respectfully state as follows:

Jurisdiction

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.

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicate for the relief requested herein is Bankruptcy Rule 9019.

Background

2. On April 1, 2003 (the “Petition Date”), the Debtors filed voluntary petitions under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to manage and operate of their businesses and properties as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. An Official Committee of Unsecured Creditors has been appointed in these chapter 11 cases (the “Cases”), and no trustee or examiner has been appointed herein.

3. The Stipulation (a copy of which is attached hereto as Exhibit A), along with the Lease Termination Agreement (which is attached to the Stipulation as an exhibit), upon Court approval, terminates the lease (the “Lease”) for the Rainbow Food retail grocery store (the “Store”) located at 16705 Country Road Plymouth, Minnesota (also known as store 73, and lease number MN-274) (the “Leased Premises”).

4. Certain Store fixtures and equipment (fixed assets), prescription files, and prescription pharmaceutical merchandise and inventory (collectively, the “Assets”) located at the Leased Premises were sold to RBF Corp., a subsidiary of Roundy’s, Inc. pursuant to the Order Authorizing and Approving the Sale or Abandonment of the Debtors’ De Minimus Assets, entered June 27, 2003 [Docket No. 1705] (the “De Minimus Asset Sale Order”).

5. Termination of the Lease permits RBF to enter into a new lease with the Landlord, and implements the parties' intention of maintaining the Store as a going concern for consideration of \$401,720 by: (a) transferring the Assets to RBF pursuant to the De Minimus Asset Sale Order; and (b) terminating the Lease pursuant to the Stipulation.

6. With the agreement of Fleming, Rainbow and the Landlord, RBF plans to open the Store located at the Leased Premises as of July 1, 2003,² having signed a lease with the Landlord that includes a condition subsequent that the Lease will be terminated by order of this Court. RBF also plans to begin selling inventory, including the portion of the Assets that consists of inventory, from the Store as of that date. RBF has or paid will pay Fleming and Rainbow \$101,720 by wire transfer on June 30, 2003 in respect of the inventory portion of the Assets, with the remainder (\$300,000) to be paid upon entry of the Order requested by this Motion.

Relief Requested

7. Fleming and Rainbow respectfully request that the Court enter an Order approving the Stipulation, authorizing the parties to take all actions necessary to effectuate the Stipulation and any other actions in accordance with the terms thereof.

Basis for Relief

8. The Debtors believe that the Stipulation and all of the actions provided for and/or permitted thereunder are in the best interests of the estate and within the reasonable

² RBF took possession of the Leased Premises as of 12:01 a.m., prevailing Central time, on June 27, 2003. RBF agreed to pay all liabilities incurred in the operation of the Store and occupancy of the Leased Premises from and after such date and time and agreed to indemnify Fleming and Rainbow against the same.

exercise of the Debtors' business judgment. See generally Committee of Equity Sec. Holders v. Lionel Corp., 722 F.2d 1063, 1070-71 (2d Cir. 1983) (applying business judgment rule to decisions to use, sell or lease assets outside of the ordinary course of business); Wes-Flo, Inc. v. Wilson Freight Co., 30 B.R. 971, 975 (Bankr. S.D.N.Y. 1983) (asset sale). A debtor satisfies the "business judgment" test when it decides, in good faith, that the proposed action will benefit the estate. In re Chipwich, Inc., 54 B.R. 427, 430-31 (Bankr. S.D.N.Y. 1985); Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985). The debtor in possession's application of its business judgment is subject to great judicial deference. In re WPRV-TV, Inc., 143 B.R. 315 (D. Puerto Rico 1991), aff'd in part, rev'd in part, 983 F.2d 336 (1st Cir. 1993); In re Thrifty Liquors, Inc., 26 B.R. 26 (Bankr. D. Mass. 1982); In re Moore, 110 B.R. 924 (Bankr. C.D. Cal. 1990); In re Walter, 83 B.R. 14, 19-20 (9th Cir. B.A.P. 1988) (the court need only find that there is a rational basis for undertaking the proposed action)

9. To minimize litigation and to expedite the administration of a bankruptcy estate, "[c]ompromises are favored in bankruptcy." 9 Collier on Bankruptcy 9019.03[1] (15th ed.). See also Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (bankruptcy court must employ its "informed, independent judgment" to determine whether the settlement is both "fair and equitable") (citations omitted). Courts will generally approve a settlement if the proposed settlement is in the best interests of the estate. In re Depoister, 36 F.3d 582 (7th Cir. 1994). The four factors ordinarily considered in determining the adequacy of a settlement are:

- (1) the probability of success in the litigation;
- (2) the difficulties to be encountered in collection;
- (3) the complexity, expense, inconvenience and delay involved in the litigation; and
- (4) the paramount interests of the creditors.

In re Christo, 223 F.3d 1324, 1335(11th Cir. 2000) (citing Wallace v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544 (11th Cir.), cert. denied, 498 U.S. 959 (1990)). See also In re Kay, 223 B.R. 816, 820-821 (M.D. Fla. 1998).

10. The Debtors believe in their business judgment that the transactions facilitated by the Stipulation are fair and reasonable, and in the best interest of their estates and creditors, as well as the employees and vendors of the Store.

Notice

11. Notice of the Motion was provided to: (a) the United States Trustee; (b) counsel to the pre-petition and post-petition lenders; (c) counsel to the Official Committee of Unsecured Creditors; (d) counsel to Landlord; (e) counsel to the RBF Corp.; and (f) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required for entry of an order granting the Motion.

No Prior Request

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

WHEREFORE, Fleming and Rainbow respectfully request that this Court enter an Order (in the form attached hereto as Exhibit B) approving the Stipulation, authorizing Fleming and Rainbow to take all actions necessary to effectuate the Stipulation, and any other actions in accordance with the terms thereof, and granting the Debtors such other relief as is just and proper.

Dated: June 30, 2003

KIRKLAND & ELLIS
James H. M. Sprayregen, P.C. (ARDC No. 6190206)
Richard L. Wynne (CA Bar No. 120349)
Geoffrey A. Richards (ARDC No. 6230120)
Shirley Cho (CA Bar No. 192619)
Marjon Ghasemi (CA Bar No. 211551)
777 South Figueroa Street
Los Angeles, California 90017
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

and

PACHULSKI, STANG, ZIEHL, YOUNG, JONES &
WEINTRAUB P.C.



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

Counsel for the Debtors and Debtors in Possession