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)
	)	
Debtors.	)	(Jointly Administered)

[Re: Docket No 1853]

Objections Due: July 15, 2003 @ 12:00 p.m.
Hearing Date: July 17, 2003 @ 3:00 p.m.

OPPOSITION TO MOTION FOR ENTRY OF AN ORDER (A) APPROVING BIDDING PROCEDURES AND BID PROTECTION IN CONNECTION WITH THE SALE OF THE WHOLESALE DISTRIBUTION BUSINESS, (B) APPROVING ASSIGNMENT PROCEDURES FOR AFFECTED EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) SETTING SALE HEARING DATES

TO: HONORABLE MARY F. WALRATH
BANKRUPTCY JUDGE

Ball Park Food Corp., C.B.A.M. Market, Inc., Giunta's Market, Inc., Mary-Lawrence Corporation, Greenwich Grocery Co., Inc., Landis Supermarket, Inc., Marrazzo's Quality Market, Inc., Holiday Supermarkets, Inc., Stop & Shop Markets, Inc., Pippy's Corp., Thrift Grocery Corp., Liberty Food Store, Inc., Two Dads, Inc., Vinmar Marketing Associates, L.P., Retail Marketing Group, LLC, a marketing group, and other members of the Retail Marketing Group, LLC who are former Fleming retail merchants in the States of New Jersey and Pennsylvania, (the "Objectants") by their attorneys, Finkel Goldstein Berzow Rosenbloom & Nash, LLP, and Jaspan Schlesinger Hoffman LLP, respectfully allege and show this Court, as follows:

1. On April 1, 2003, the Debtors filed voluntary petitions under the Chapter 11 Bankruptcy Code. Each of the Objectants are former customers of the Debtors. Objectants own and operate supermarkets which were supplied their groceries and other products by the

Debtors in New Jersey and Pennsylvania. Each of the Objectants has a long standing business relationship with the Debtors spanning, in many instances more than twenty years. The Objectants operate their businesses under the Debtors' Shop N Bag and Thriftway trade names.

2. A reading of the Debtors' motion gives this Court the wrong impression of what the facts are concerning the business relationships involved between the Debtors and the Objectants, individually, or as a group. The Debtors seek authority to establish bidding procedures and this request should be read in conjunction with the Asset Purchase Agreement (the "APA") dated as of July 7, 2003 between C&S Acquisition, LLC as Purchaser and the Debtors as Sellers. The APA, while not attached to the motion, can be accessed (without critical Exhibits and Schedules) from the website set forth within the proposed bidding procedures notice. Strikingly absent from the papers on file with the Court, or in the APA is a list of the affected executory contracts and unexpired leases which are to be assumed and assigned to the Purchaser and would constitute core assets in any proposed sale of the Debtor's "wholesale distribution business". Interested parties have no idea what is being sold and what is being purchased. In the case of the Objectants, not having this information will take away their ability to properly object to the sale and have the Court adjudicate the propriety of the sales and/or assignments of their subleases, supply agreements and other executory customer agreements before the sale is approved by the Court. Once again, by the proposed bidding and sale procedures, the Debtors are shortcutting the due process rights of the Objectants and countless others.

3. The Objectants constitute a very small portion of the Debtors' wholesale business in the States of New Jersey and Pennsylvania. They have substantial claims totaling many millions of dollars against the Debtors and any assignee which assumes the executory

agreements as will be hereafter described. There are several core agreements which establish the Debtors' relationship with the Objectants. These agreements generally consist of one or more of the following:

The Supply Agreement

4. The supply agreement was the central executory agreement under which the Debtors covenanted and agreed to dedicate sufficient manpower and supplies to stock the stores with merchandise inventory required for normal business operations. The supply agreement required that the individual merchant attain a so called "teamwork score" which in essence placed strict requirements on the amount of merchandise which the customers had to purchase from Fleming and which Fleming was obligated to sell to the customers in order to attain their teamwork score. Typically, a wholesale grocer provides a service level of at least 95% which is required to provide the customer with a complete inventory required to service retail customers in the ordinary course of business. It can be documented that Fleming was willfully in default under its obligations under the supply agreement for at least three years resulting in millions of dollars of losses which can be established and quantified by each individual store owner. The Court can well imagine the frustration of the merchant where Fleming instituted advertising programs showing promotional merchandise which was advertised in fliers where immediately before the sale was supposed to begin, the merchant was advised that the sale inventory was not available. The merchants had to obtain the inventory from secondary sources at increased product cost, shipping charges and labor costs. The Court should also be aware that on May 25, 2003, the Debtors advised the Objectants that they will no longer supply them and that they should find another supplier. The Debtors defaults have caused massive

damages to the Objectants and to all of the other merchants who were parties to the supply agreements.

The Sublease Agreement

5. In many instances, in addition to having a supply agreement, the Debtors entered into sublease agreements with individual store owners including some of the Objectants. Typically, the Debtors would enter into a main lease with a Landlord for a fixed term (generally in the case of the Objectants for 20 years) and options which generally consisted of two or more five-year option terms. The Debtors would then simultaneously sublet the premises to the store operators for successive five-year periods which were automatically renewable unless the Debtors notified their customers within 120 days prior to the termination of each five-year term. Generally speaking, the aggregate terms of the sublease was for twenty years but generally did not include the option period. There was often a small upcharge of five percent or less between the rent paid by Fleming and the subrent which Fleming charged to the store merchants. The store merchants paid their sublease payments weekly while Fleming paid its overlandlords on a monthly basis. The store merchants were continuously assured by Fleming that the subleases would be renewed throughout the terms of the subleases and options. Based upon these representations, the individual store merchant would spend millions of dollars to acquire, renovate and refurbish the stores; most of which range between 30,000 to 50,000 square feet. The merchants were told that corporate policy did not allow for the deviation of the basic sublease terms, but as long as the merchants remained faithful Fleming customers, their subleases would always be extended and their right of possession would not be interrupted. Fleming they were told, was a grocer, not a landlord and that the stores belonged to the

merchants. In some cases, the Debtors gave comfort letters to the Objectants acknowledging that the Debtors would continue leasing the stores.

6. The Objectants can document, from amongst their constituency, numerous instances where millions of dollars were invested into refurbishing and/or constructing large supermarket store facilities based upon the executory agreements and representations of the Debtors. These representations can be established from the mouths of the store merchants and the former officers of the Debtors who made these representations to the store operators. The Court would have to be naïve to think that any knowledgeable merchant would spend millions of dollars to purchase or build a store then later spend over $1,000,000.00 to renovate a store with a five-year sublease. There simply could not be enough time to amortize the cost and recover the investment.

Loan Agreements and Promissory Notes

7. In many instances, the Debtors have entered into loan agreements with individual store operators (many other merchants incurred institutional debt based on Fleming's representations) which aside from being accompanied by the sublease and supply agreements, were accompanied by a promissory note to evidence the debt repayment terms. In some instances, the transactions were based upon marketing surveys undertaken by the Debtors and relied upon by the merchants in making the business decision to proceed with the particular transaction. In many instances, the marketing surveys were fundamentally flawed and they have resulted in tremendous claims against the Debtors under the various executory agreements. In some instances, the Debtors acknowledged their misrepresentations by allowing weekly offsets of sublease payments or dramatically restructuring its sublease payments so that they would then be based upon gross store volume rather than the amounts specified within the sublease

agreements. In one case, the Debtors gave rent rebates in excess of $12,000.00 per week for a multi-year term based upon a faulty marketing survey.

Additional Damages

8. The Debtors' inability to supply merchandise to their customers was based upon the Debtors' inability to pay their suppliers for goods though the Debtors promised the store merchant that it would make product deliveries. The store merchant advertised these goods in their weekly sales fliers and lost customers who specifically came to buy these goods and were upset when there was no merchandise to buy. This in turn resulted in additional damages as will hereafter be described.

9. Each of the Objectants are members of RMG Marketing, Inc., a cooperative buying group. It is customary in the supermarket industry for large manufacturers to give promotions to wholesalers by way of rebates or other promotional considerations which are then passed along to the individual merchants. In Fleming's case, the individual rebates were not passed on to the store operators during the later years. RMG also, on behalf of its members, obtains discount prices from national suppliers by committing to purchase large quantities of product. Because of Fleming's financial difficulties, many manufacturers refused to give promotions to RMG and its members. RMG has prepared a table showing promotional funding which its members lost during 2001 and 2002. A copy of the chart is annexed hereto as Exhibit "A" and reflects no less than $2,466,986.92 in damages to the individual store operators.

10. The Objectants are closely held corporations which are owned by modest people from hard working families, and who each have their story of broken promises by Fleming. Annexed hereto as Exhibit "B" is a description of damages by Mr. Frank Giunta of Giunta's Market, Inc., a twenty-year customer of Fleming whose family has operated a

supermarket in West Chester, Pennsylvania for 75 years. Mr. Giunta's corporation would not have spent $1,500,000.00 in 1999 to expand his store if not for his business relationship with Fleming and promises made to him by Fleming. Approximately $900,000.00 is still owing to the bank and Mr. Giunta would not have incurred and guaranteed this debt based upon a five-year sublease. He was assured that his store would always belong to him and his family.

11. The Objectants believe that it is not a coincidence that the leases, subleases and executory agreements which are the subject matter of the APA are not appended to the document or to the motion before the Court. The Objectants believe that their relationships with the Debtors are fully integrated transactions which should legally, equitably and morally be treated as one. The Objectants relied upon Fleming's representations and dedicated their lifeblood to their family businesses. The Objectants have valid claims of offset, recoupment and counterclaims for damages tied to these integrated transactions and should be given the opportunity to purchase their individual subleases from the Debtors giving credit for their claims of damage, offset and recoupment as authorized by applicable law. The individual merchants should be free to choose whom they do business with and this choice should not be made for them by the Debtor or this Court.

12. The APA should fully set forth the assets which are being purchased as well as the leases and executory agreements which are to be assumed and assigned so that the Objectants have the opportunity to have their claims adjudicated by the Court before the transaction is completed. To do otherwise will leave the Objectants with no recourse. The only way the store merchants can be adequately compensated for their losses and damages is to have the Debtors representations to them fulfilled by having the underlying lease agreements assigned to them so that there is no risk of having their subleases terminated prior to the end of all option

periods in the respective overleases. Based upon the size of the Debtors and the amount of damages experienced by the small number of Objectants herein, it is inconceivable that the $22,000,000.00 maximum cure escrow will be sufficient to pay the customers cure amounts and damages from the defaults under the executory agreements.

13. The Debtors are represented by one of America's large national law firms and has employed cadres of consultants and advisers under court orders and who will invariably be paid millions of dollars in this proceeding. Loyal Fleming customers who have invested their lives based on their relationship with the Debtors must now be given fundamental information to allow them to protect their rights. The Debtors should be required to present a complete APA with all the exhibits and schedules to the Court and creditors particularly where the purchase price is estimated at $400,000,000.00. These cases which apparently will involve the liquidation of large corporations should not victimize innocent hardworking people who dedicated their lives to the Debtors' wellbeing throughout their difficult times.

14. It seems patently unreasonable for the Debtors to be granted abbreviated notice on an APA involving a purchase price estimated by the Debtor at $400,000,000.00. Creditors and parties in interest are entitled to minimally know what is being purchased and should be given ample time to prepare their opposition and responses to the transaction.

[Remainder of page intentionally left blank]

WHEREFORE, the Objectants pray for an Order requiring the Debtors to prepare and present a complete APA with complete exhibits and schedules to the Court, denying the Debtors' request to allow the store leases, subleases and executory agreements to be included in the sale without allowing the merchants to purchase their subleases in accordance to the Debtors' representations to them and for such other and further relief as this Court may deem appropriate.

Dated: July 15, 2003

JASPAN SCHLESINGER HOFFMAN LLP

By: */s/ Frederick B. Rosner*
Frederick B. Rosner (No. 3995)
1201 N. Orange Street, Suite 1001
Wilmington, DE 19801
Telephone: (302) 351-8000
Facsimile: (302) 351-8010

-- and --

FINKEL GOLDSTEIN BERZOW ROSENBLOOM & NASH, LLP
Neal M. Rosenbloom, Esq.
26 Broadway, Suite 711
New York, New York 10004
Telephone: (212) 344-2929
Facsimile: (212) 422-6836

Attorneys for Objectants