

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.)

[Re: Docket No. 2034]

Objections Due: July 28, 2003 @ 4:00 p.m.
Hearing Date: August 4, 2003 @ 11:30 a.m.

**COMBINED OBJECTION TO CURE AMOUNT AND
TO STATEMENT WITH RESPECT TO
ASSIGNMENT OF EXECUTORY AGREEMENTS**

**TO: HONORABLE MARY F. WALRATH
BANKRUPTCY JUDGE**

LEO MALL MARKETS, INC., (the "Objectant") by its attorneys, Finkel Goldstein Berzow Rosenbloom & Nash, LLP and Jaspán Schlesinger & Hoffman LLP, as and for its combined objections to cure amount and to the proposed assumption and assignment of leases respectfully alleges and shows this Court as follows:

GENERAL BACKGROUND

1. According to the Cure Amount Schedule prepared by the Debtors, Objectant's contract assignment number is 4715. That Schedule alleges that the cure amount on Objectant's executory agreement totals \$-0- which is totally erroneous.

2. Objectant owns and operates a retail supermarket located at 11701 Bustleton Avenue, Philadelphia, Pennsylvania. The Objectant is a former customer of the Debtors who supplied Objectant.

THE FACILITY STANDBY AGREEMENT

3. At first instance, Objectant contends that to the extent that the Debtors seeks to assign their obligations under a so called facility stand-by agreement ("FSA") such agreement cannot be assigned as it was unilaterally terminated by the Debtors pursuant to a written notice dated May 14, 2003 sent to the Objectant, a copy of which is annexed hereto and made a part hereof as **EXHIBIT "A"**.

4. The Objectant was told by the Debtors that they could not supply Objectant with inventory any longer and that Objectant should find a new wholesale grocer. Objectant experienced damages under the FSA, a copy of which is annexed hereto as **EXHIBIT "B"** as will be hereafter described.

5. Under the Debtors' FSA supply agreement, the Debtors agreed to dedicate sufficient resources to adequately and properly supply the Objectant with merchandise in the ordinary course of Objectant's business. It is typical in the supermarket industry for a wholesale grocer to maintain a service level of at least 95%. If a lower service level is maintained, the retail merchant will be unable to have adequate merchandise on its shelves to properly service its customers. In the Debtors' case, service levels under the FSA during the years 2001 and 2002 were generally less than 90%.

These service level deficiencies resulted in lost sales, customer dissatisfaction and the loss of customers, excessive labor costs and additional significant other damages. The debtors' breaches under the terminated FSA resulted in damages estimated \$49,325.00 for the period of January 1, 2002 through March 31, 2003. Objectant reserves the right to supplement this cure notice by alleging additional damages for the period prior to January 1, 2002 together with calculating post-petition damages for the period from April 1, 2003 through May 25, 2003.

6. In addition to the damages set forth above, Objectant is a member of Retail Marketing Group LLC, a co-operative buying group which obtains promotional rebates and funding from manufacturers based upon high volume purchases. Because the Debtors breached their obligations under the FSA by failing to pay the obligations which it owed to their suppliers, Objectant lost promotional funding totaling \$17,390.79 in 2001 and \$24,667.67 in 2002.

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7. Under provisions of §365 of the Bankruptcy Code, in order to assume and assign this "terminated agreement" damages totaling \$91,383.46 would have to be paid to the Objectant at the time of assignment.

Dated: July 24, 2003

LEO MALL MARKETS, INC.

By: 

AL SLIPAKOFF, Pres.

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