

**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.)	Hearing Date : August 4, 2003 at 11:30 a.m.
)	Objections Due by: July 28, 2003 at 4:00 p.m.

**OBJECTION OF E.W. JAMES & SONS, INC. TO CURE AMOUNTS
AND TO POTENTIAL ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION WITH SALE MOTION**

E.W. James & Sons, Inc. (“EWJ”), by and through its undersigned counsel, hereby files this Objection to the Notice Re Potential Assignment and Assumption of Certain Executory Contracts and Unexpired Leases in Connection with Sale Motion dated July 11, 2003, as supplemented by the Notice dated July 19, 2003 (collectively, the “Notice”), and in support thereof, respectfully states as follows:

1. EWJ owns and operates numerous grocery stores in the State of Tennessee. On or about March 24, 1998, EWJ and the above-captioned debtors and debtors in possession (the “Debtors”) entered in to a Facility Standby Agreement, as amended on July 1, 2002, wherein the Debtors agreed to supply EWJ with a certain amount of food, grocery and related products for its stores.¹ A true and correct copy of the Facility Standby Agreement is attached hereto as Exhibit A.

2. Since May of 2003, the Debtors have failed to perform in accordance with the Facility Standby Agreement and have failed to supply EWJ with a substantial portion

¹ EWJ is a party to several other agreements and subleases with the Debtors. In the event that the Debtors seek to assume and assign any other agreement or sublease with EWJ other than the Facility Standby Agreement identified in the Notice, EWJ reserves its rights to file an objection or to supplement or amend this Objection regarding such assumption and assignment.

of the products ordered by EWJ from the Debtors. As a result of the Debtors' continuous breach of the Facility Standby Agreement, EWJ has been forced to expend significant time and resources ordering products from other suppliers and enter into other supply agreements in order to receive products and minimize the damages resulting from the Debtors' failure to perform.

3. In the Notice, the Debtors propose to assume and assign the Facility Standby Agreement, which is identified as Contract Assignment Number 4729. EWJ objects to the proposed assumption and assignment of the Facility Standby Agreement. The Debtors failure to perform under the Facility Standby Agreement has resulted in damages to EWJ, including costs incurred in locating temporary suppliers, which include additional trucking and labor costs, and the potential competing liability EWJ may face under the other supply agreements in the event that the Debtors are permitted to assume the Facility Standby Agreement.² EWJ asserts that the foregoing damages are a direct result of the Debtors' on-going default under the Facility Standby Agreement. To the extent that the Debtors assert that the foregoing damages are consequential damages, EWJ reserves the right to respond to any motion by the Debtors asserting that they are not liable for consequential damages.

4. In addition, EWJ objects to the assumption and assignment of the Facility Standby Agreement because the Debtors have failed to provide adequate assurance of future performance by any potential assignee. Certainly, the Debtor's assertion in the Notice that the Successful Bidder's mere promise to perform under the assigned contract

² Due to the short period of time between the Notice and the objection deadline, EWJ has been unable to quantify the amount of damages incurred as of the date of the filing of this Objection. EWJ reserves the right to amend or supplement this Objection to include the amount of damages incurred and any additional damages incurred after the date of the filing of this Objection.

is insufficient to constitute adequate assurance of future performance under section 365(f)(2) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). EWJ is entitled to adequate assurance of future performance by the Successful Bidder and any subsequent assignee under Section 365 of the Bankruptcy Code. EWJ reserves its rights to require adequate assurance of future performance in the event that the Debtors provide notice of its intent to assume and assign the Facility Standby Agreement, as provided in the Notice.

5. Further, EWJ reserves the right to supplement or amend this Objection within a reasonable time following receipt of additional information from the Debtors regarding the potential assumption and assignment of the Facility Standby Agreement and the ability of the Facility Standby Agreement to be assumed or assumed and assigned and to require adequate assurance of future performance by any assignee seeking to assume the Facility Standby Agreement.

WHEREFORE, E.W. James & Sons, Inc. respectfully requests that the Court enter an Order (i) determining the proper cure amount under the Facility Standby Agreement as provided herein, (ii) requiring the Debtors to provide sufficient adequate assurance of future performance under Section 365 of the Bankruptcy Code, and (iii) granting such other and further relief as is just and proper.

Dated: July 28, 2003

THE BAYARD FIRM



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